TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 255

J. P. WAUGH, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI AND A. A. KINCANNON, CHANCELLOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED AUGUST 26, 1914.

(23,843)

(23,843)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 692.

J. P. WAUGH, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI AND A. A. KINCANNON, CHANCELLOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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1 *Convening Order of the Court.*

Chancery Court, Lafayette County, Mississippi, in Vacation.

THE STATE OF MISSISSIPPI,
County of Lafayette:

Be it remembered that the Honorable Chancery Court met at the Court House in the Town of Oxford, on the 1st day of May 1913, it being the time and place, according to agreement of Counsel on both sides for holding said Court, for the purpose of hearing cause No. 4263, J. P. Waugh, Complainant vs. Trustees of the University of Mississippi, et al., when and where there were present his Honor T. L. Lamb, Special Chancellor, E. E. Temple, Sheriff, W. M. Woodward, Clerk.

After Court was opened according to law the following proceedings were had towit:

Appointment of T. L. Lamb, Special Chancellor.

THE STATE OF MISSISSIPPI,
Executive Department:

Whereas, Chancellor D. M. Kimbrough, Chancellor of the Third Chancery Court District of Mississippi has recused himself in the following cause now pending in the Chancery Court of Lafayette County, Mississippi, towit:

No. 4263.

J. P. WAUGH
vs.
TRUSTEES OF THE UNIVERSITY et al.

Now, therefore, I, Earl Brewer, Governor of the State of Mississippi, by virtue of the authority vested in me by the Constitution and Laws of the State of Mississippi, do hereby appoint and commission Hon. T. L. Lamb a person of law knowledge as Special Chancellor to preside in the trial of the above cause and to do and perform all things pertaining to it as fully in every respect as the said Hon. D. M. Kimbrough, Chancellor, could do if he were not disqualified, or had not recused himself, and were present and presiding.

In Testimony whereof, I have hereunto set my hand and caused the Great seal of the State of Mississippi to be affixed.

Done at the Capitol in the City of Jackson this the 8th day of January A. D. 1913.

By the Governor.

EARL BREWER.

[SEAL.]

JOSEPH W. POWER,
Secretary of State.

2 *Order.*

J. P. WAUGH
vs.
BOARD OF TRUSTEES et al.

This day this cause came on for hearing, and it appearing that the regular Chancellor, D. M. Kimbrough, was disqualified and had so certified the same to the Governor, T. L. Lamb of the Webster County Bar, was by the Governor appointed a Special Chancellor to try said cause, who appeared and took the prescribed oath of Office.

This May 1st 1913.

T. L. LAMB,
Special Chancellor.

Oath of Office of T. L. Lamb, Special Judge.

Filed May 1, 1913.

THE STATE OF MISSISSIPPI,
County of Lafayette:

Oath of Office.

I, T. L. Lamb, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of Special Chancellor of the County of La Fayette, in said State; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

T. L. LAMB.

Sworn to and subscribed before me, this the 1 day of May 1913.

W. M. WOODWARD,
Chancery Clerk.

3 STATE OF MISSISSIPPI,
County of Lafayette:

In Chancery Court.

J. P. WAUGH, Complainant,
vs.
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISS. and A. A. Kincannon, Chancellor of the University of Mississippi, Defendants.

Original Bill.

To the Honorable Chancery Court of Lafayette County, State of Mississippi:

Complainant would respectfully show to the Court as follows:

That he is a citizen of the United States and the State of Mississippi and that he resides in Goodman, Holmes County in said State and is a taxpayer in said County and State.

That the Defendant, Board of Trustees, is composed of the following members: Hon. Earl Brewer, President, a citizen of the State of Mississippi and now a resident of the City of Jackson, Hinds County; Hon. J. N. Powers, citizen of the State of Mississippi and now a resident of the City of Jackson in said State; Hon. O. F. Lawrence, a citizen of Grenada County and State of Mississippi, residing at Grenada, Mississippi; E. L. Brien, a citizen of Warren County and State of Mississippi; T. B. Franklin, a citizen of Lowndes County, State of Mississippi; Hon. T. W. Carter, a citizen of Calhoun County, and State of Mississippi; Hon. Eugene M. Clark, a citizen of Adams County and State of Mississippi; Hon. Rob't Rowell, a citizen of Hinds County and State of Mississippi; Hon. J. W. Cutrer, a citizen of Coahoma County and State of Mississippi; Hon. B. F. Jones, a citizen of De Soto County and State of Mississippi; that A. A. Kincannon is a citizen of the State of Mississippi. That D. L. Ross is the Secretary of the said Board of Trustees and of the University of Mississippi.

That the University of Mississippi was incorporated by an Act of the Legislature of the State of Mississippi, approved Feb. 24, 1844 entitled "An Act to incorporate the University of Mississippi."

Sections One and Two of Said Act are as follows:

1. J. Alexander Ventress, John A. Quitman, William L. Sharkey, Alexander M. Clayton, William Y. Gholson, Jacob Thompson, Pryor Lea, Edward C. Wilkinson, James M. Howry,
4 John C. McCaughin, Rev. Francis Hawkes, J. N. Waddel, A. H. Pegues, are hereby appointed Trustees of the University of Mississippi, in Lafayette County, and they and their successors in office are hereby declared and constituted a body politic and corporate, by the name and style of the "University of Mississippi," a majority of whom shall form a quorum to do business, but a committee of less number may be appointed to transact necessary business in the interim of a regular Session of said Trustees."

"2. Said corporation shall be possessed of all the general powers,

privileges and emoluments, now secured to similar corporations, by the constitution and laws of this State, and to adopt such by-laws and rules as they may deem expedient, for the accomplishment of the trust reposed in them, not repugnant to the constitution and laws of this State."

Section 5028 of the Miss. Code of 1906 provides as follows:

"The Board of Trustees shall possess all the powers necessary and proper for the accomplishment of the trust reposed in it, viz: The establishment and maintenance at the University Buildings, near Oxford, in La Fayette County, of a first-class institution in the different departments of learning; and it may adopt all such by-laws and regulations as it may deem expedient for this purpose not repugnant to law."

That by the Act of Congress of the United States approved Feb. 20, 1819, and by Act of Congress of the United States approved June 20, 1894, two townships of land were granted by the government of the United States for the establishment, support and maintenance of said University; that in addition to the said endowment by the government of the United States the Legislature of the State of Mississippi makes, and has made for several years large annual appropriations for the support of said University.

Chapter 177 of the laws of the State of Mississippi, of 1912, approved Feb. 27, 1912 is as follows: "An act to abolish and prohibit Greek Letter Fraternities and sororities and all secret orders among Students in the University of Mississippi and in all other educational institutions supported, in whole or in part, by the state, providing such penalties for any trustee, teacher or other officer connected with the institution for failure or refusal to enforce the provisions of this act; providing penalty for any student who knowingly violates the provisions of this act; and empowering the Board of Trustees of the University to purchase all buildings now owned by any of the said orders.

To Prohibit Greek Letter Fraternities and Societies in State Educational Institutions.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That the Fraternities and sororities or Greek letter societies, known as "Delta Kappa Epsilon", "Delta Psi", "Delta Tau Delta", "Sigmi Chi", "Kappa Alpha", "Phi Kappa Psi", "Sigma Alpha Epsilon", "Phi Delta Theta", "Chi Omega", "Tau Delta Theta", and other secret orders, chapters, fraternities, sororities, societies and organizations of whatever name, or without a name, of similar name and purpose, among students are hereby abolished and further prohibited to exist in the University of Mississippi and in all other educational institutions supported, in whole or in part, by the State.

Students Joining Same Barred from Class Honors, etc.

Sec. 2. That no student in the University, or in any other educational institution supported, in whole or in part, by the State, who

is a member of any of the orders, Chapters, Fraternities, sororities, societies and organizations hereby prohibited, shall be permitted to receive any class honors, diplomas or distinctions conferred by the institution of which he is a student, nor to compete nor contend for any prize or medal offered by his respective school, or by any association or individual. But any student who is a member of any of the orders, chapters, fraternities, sororities, societies or organizations aforesaid may, upon entrance to any of the aforesaid schools, file with the Chancellor, President or Superintendent, as the case may be, an agreement in writing that he will not, during his attendance at said School, affiliate with same, nor attend their meetings,
6 nor in any wise contribute any dues or donations to them, and, thereafter so long as such agreement is complied with in good faith, such student shall not be subjected to the restrictions created by this action.

Trustees and Faculties to Enforce this Act.

SEC. 3. This Act shall be enforced by the Trustees and faculties by such rules and punishment as they prescribe.

Officers Permitting Violations of this Act Are to be Removed,

SEC. 4. Any member of the Board of Trustees, faculty or other officer connected with any educational institution supported, in whole or in part, by the State, who shall knowingly permit any violation of this act and shall fail or refuse to take proper steps to enforce this act, shall be removed from such position by the Governor.

Institutions May Purchase Buildings Owned by Societies.

SEC. 5. The Board of Trustees of the University of Mississippi are hereby authorized and empowered to purchase any and all buildings now owned by any of said orders, chapters, fraternities, sororities, societies and organizations aforesaid, if the owners thereof desire to sell the same, and to pay for any and all such buildings a fair and reasonable price out of any money appropriated for that purpose.

SEC. 6. That this act take effect and be in force from and after its passage.

Approved February 27, 1912."

That Complainant is now and has been for several years a member of what is known as the Kappa Sigma Fraternity and affiliated and identified with the chapter of that fraternity at Millsaps College. That the said Kappa Sigma fraternity is one of the fraternities embraced in the above recited Act of the Legislature of the State of Mississippi, approved February 27, 1912.

Pursuant to the said enactment of the Legislature the said Board of trustees at a regular meeting held on March 27th, 1912, adopted the following order:

"The Board desires it understood that the anti-fraternity Law

passed by the Legislature but recently adjourned, is not construed by it to apply to students already entered and who conduct themselves with that decorum always expected of Southern Gentlemen."

And at a regular meeting of the Board of Trustees held Sept. 16, 1912 the following order was adopted: Extracts from minutes of Board of Trustees meeting Sept. 16, 1912, in the matter of dealing with the societies and fraternities, named in the Senate Bill 227 and approved by the Governor Feb. 27th, 1912, it was ordered that the following be incorporated in the application for admission to the University:

"I hereby state and affirm upon my honor that I am not now pledged to become a member of any of the Greek letter fraternities, societies or sororities named in Senate Bill 227, and that I have not become a member of any of said fraternities, sororities or societies within sixty days preceeding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University and I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies while I am a student of the University. I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any way be the beneficiary of any students' self help fund, nor accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge. I furthermore promise and pledge to regard this obligation as binding between the sessions of 1912-13 and 1913-14 and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative of the letter and the spirit of what is known as the Anti-fraternity Bill" passed by the last Legislature and approved by the Governor February 27th, 1912."

That certified copies of these orders are herewith filed, marked exhibit "A" and asked to be taken as part of this bill.

That pursuant to last named order the following form of application for the admission as a student to said University, together with the following pledge, was by order of the said Board of Trustees adopted:

8 University of Mississippi.

No. —.

Application for Admission as Student.

I hereby make application for admission to the University of Mississipi as a student, promising to observe faithfully while a member of the same all the laws and regulations of the University. (The following is made a part of this pledge by order of the Board of Trustees.)

"I hereby state and affirm upon my honor that I am not now pledged to become a member of any Greek Letter Fraternities, societies or sororities named in the Senate Bill 227 of the Laws of Mississippi 1912" pages 192 and 193, Chapter 177, and that I have not

become a member of any of said fraternities, sororities or societies within sixty days preceeding the opening of the session, 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University, and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies so long as I am a student of the University.

"I further pledge and promise that I will not apply for nor accept any scholarship or medal or in any way be beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.

"I furthermore pledge and promise to regard this obligation as binding between the sessions 1912-13 and 1913-14 and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative of the letter and the spirit of what is known as the Anti-fraternity Bill" passed by the Legislature of 1912 and approved by the Governor February 27, 1912."

I have no deadly weapons in my possession, or in the possession of others for me, in violation of the laws of the University and the State.

Signature (Full Name), —— ——.

Age, —. Post Office —— ——.

County ——. Date —— — 191–.

9 Candidate for degree of —.

A certified copy of this application is herewith filed and marked "Exhibit B" to this bill and asked to be taken as a part thereof.

Complainant would now show that on the — day of Nov. 1912 he applied to the said Chancellor of the University for admission as a student in the law department to the said University; that thereupon the said Chancellor of the University presented this Complainant the said application for admission, adopted by said Board, and requested this Complainant to sign said application and said pledge as a pre-requisite to his admission as a student to said University; this the complainant refused to do and the Chancellor of the University, then acting for the Board of Trustees and under their orders, refused to admit the Complainant as a student in said University that said refusal was based alone upon the grounds that complainant refused to sign said pledge; that said refusal was made on no other ground; that this complainant was in all respects otherwise eligible to admission to said University under the laws of the State of Mississippi and the United States.

Complainant now states that he has never been a member of, nor in any way affiliated with nor paid dues to any chapter of any of the so-called Greek letter fraternities organized among the student body of said University or located at said University, that although he is affiliated with and pays dues to the chapter of the said Kappa Sigma Fraternity at Millsaps College, if admitted as a student to the said University of Mississippi, he has no intention or purpose of encouraging the organization, continuance or maintenance of any

Greek letter Fraternities in the said University, or to affiliate with or to pay dues to or in any way support or encourage any such organizations in said University or to be connected with any sort of activities or work or meetings connected with any of said fraternities in said University.

Complainant now says that he is informed and believes that the said Act of the Legislature approved Feb. 27, 1912, is in direct conflict with the Constitution of the State of Mississippi and the
10 Constitution of the United States in the following particulars:

1st. That said Act is in violation of Sec. 71 of the constitution of the State of Mississippi in that its title does not "indicate clearly the subject matter or matters of the proposed legislation." The title of said act indicates the subject matter of Sec. 1 alone. There is nothing in the said title that in the slightest way indicates the subject matter of Sec. 2.

2nd. The said Act is in violation of Secs. 1 and 2 of the constitution of the State of Mississippi in this, that under the charter of the University of Mississippi and all the statutes relating thereto, the government and discipline of the University of Mississippi and the control of its students has been delegated exclusively to the Board of Trustees and are executive and not legislative functions to be exercised through the Board of Directors. Under Sec. 2 of said constitution the power properly belonging to the Board of Trustees belongs to the Executive department and the enactment of said Chapter 177 of the laws of Mississippi of the executive authority.

3rd. That as a citizen of the United States and the State of Mississippi, within the jurisdiction of the State of Mississippi, Complainant is, under the 14th amendment of the constitution of the United States entitled to the protection of life, liberty and property and the pursuit of happiness and entitled to the equal protection of the law, and that the said Act of the Legislature, and regulations of the Board of Trustees of the University of Mississippi refusing admission to complainant to the University of Mississippi, without reason, deprives the complainant of his property and property right, liberty and his harmless pursuit of happiness and denies to the Complainant the equal protection of the law of the State of Mississippi.

Complainant would now show as he is informed and believes, that if the Legislature has a right to make rules and regulations for the discipline of the University of Mississippi, that the said Act approved Feb. 27, 1912, considered as a rule or regulation for the government of the University is unreasonable and unnecessary. That the said Kappa Sigma fraternity, of which complainant is a member,
11 has for its paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standing and good order and discipline in the student body of the different colleges with which it is connected. That Sec. 2 of said Act of the Legislature is unreasonable in that it unnecessarily and unjustly assumes extra territorial jurisdiction in prohibiting a member of any fraternity or chapter not connected with the said University from receiving any class honors, diplomas or distinctions conferred by the University and prohibits him from contending for any prize or medal offered by any individual; and in that it prohibits any stu-

dent of the University from affiliating with or attending the meetings of or paying dues to any chapter of any fraternity wherever situated, although entirely disconnected with the said University:

Complainant would further show that the regulations contained in said application for admission which would prohibit him aiding, abetting or encouraging or affiliating with any chapter or any Greek letter fraternity of any college wherever situated, is unreasonble, unjust and extra territorial as is also the regulations contained in said application requiring the applicant to regard the obligation as binding between the session 1912-13 and 1913-14. That the said Millsaps college is not supported, in whole or in part, by the State of Mississippi, or by taxation levied by the State.

The premises considered, Complainant prays for proper summons to the Defendants, the members of the Board of Trustees and the said A. A. Kincannon, Chancellor of the University, to appear before this honorable Court at rules on the second Monday in January, A. D. 1913, to plead, answer or demur to this bill.

And Complainant further prays that the writ of injunction issue from this honorable Court directed to said Board of Trustees and A. A. Kincannon, Chancellor, enjoining them from and commanding them to refrain from enforcing the said order of the said Board of Trustees, made and entered on Sept. 16th, 1912 and enjoining them and command them to refrain from requiring Complainant to sign the said pledge incorporated in the said application for admission as a student to said University, and on final hearing
12 hereof may it please the Court to decree that the said Act of the Legislature approved Feb. 27, 1912 is in conflict with the Constitution of the United States and the Constitution of the State of Mississippi, and void, and that the rules and regulations adopted by said Board of Trustees in the said order of the Board dated Sept. 16, 1912, and that the said pledge required of applicants for admission as student- to said University, are unreasonable and ultra vires; and that said injunction be made perpetual; or if complainant is mistaken in the relief prayed for, may the Court grant him such other, further and general relief as may be right and proper, and the Complainant will ever pray, &c.

HAMILTON DOUGLASS,
T. C. KIMBROUGH,
JAS. R. McDOWELL,
W. G. CAVETT,
A. F. FOX,
Att'ys for Complainant.

To the Clerk of the Chancery Court of Lafayette County, Mississippi:

Let the writ of injunction issue as prayed for in the foregoing Bill, upon complainant entering into Bond conditioned according to law, in the penalty of Five Hundred Dollars, with two or more Sureties; said Bond to be approved by you. Ordered this the 20th day of December 1912, at Oxford, Miss.

D. M. KIMBROUGH, *Chancellor.*

STATE OF MISSISSIPPI,
Hinds County:

This day personally appeared before me, the undersigned authority of law in and for said County, the above named J. P. Waugh, Complainant in the foregoing bill, and being duly sworn states that the matters and things alleged in said bill of his knowledge are true and those alleged on information and belief, he believes to be true.

J. P. WAUGH.

Sworn to and subscribed before me this the 17th day of December, 1912.

J. H. THOMPSON,
Notary Public.

13 (*Extract from Minutes of Board of Trustees' Meeting March* 27, 1912.)

"There is this day filed with the Board a petition, addressed to the Chancellor of the University, signed by C. S. Leavell, M. S. Conner, and six others, students of the University, stating that they have been Law abiding students and loyal to the University. In the matter of this petition the following motion was made and carried: The Board desires it understood that the Anti-Fraternity Law passed by the Legislature but recently adjourned, is not construed by it to apply to students already entered and who conduct themselves with that decorum always expected of Southern gentlemen."

(*Extract from Minutes of Board of Trustees' Meeting Sept.* 16, 1912.)

"In the matter of dealing eith the Societies and the Fraternities names in Senate bill 227 and approved by the Governor Feb. 27, 1912, it was ordered that the following be incorporated in the "Application for Admission" to the University: "I hereby state and affirm upon my honor that I am — now pledged to become a member of any of the Greek letter fraternities, societies, — sororities named in the senate Bill 227 of the "Laws of Mississippi,, 1912", pages 192 and 193, Chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within the sixty days preceeding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies while I am a student of the University.

I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any way be the beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.

I furthermore promise and pledge to regard this obligation as binding *sebteen* the sessions of 1912-13 and 1913-14 and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative *to* the letter and the spirit of what is know- as the "Anti-Fraternity Bill" passed by the last legislature and approved by the Governor February 27, 1912."

I certify that the above is a true and exact copy of that portion of the Minutes of the Board of Trustees relative to the Fraternity Question at the University of Mississippi.

D. L. ROSS,
Secretary of the U. of M.

University of Mississippi.

No. —.

Application for Admission as Student.

I hereby make application for admission to the University of Mississippi as a student, promising to observe faithfully while a member of the same all the laws and regulations of the University. (The following is made a part of this pledge by order of the Board of Trustees:)

"I hereby state and affirm upon my honor that I am not now pledged to become a member of any of the Greek letter fraternities, societies or sororities named in Senate Bill 227 of the 'Laws of Mississippi 1912' pages 192 and 193, chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within the sixty days preceeding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University, and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies so long as I am a student of the University.

"I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any way be the beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.

"I furthermore pledge and promise to regard this obligation as binding between the sessions of 1912-13 and 1913-14, and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative of the letter and the spirit of what is known as the 'anti-Fraternity Bill' passed by the Legislature of 1912 and approved by the Governor February 27, 1912."

I have no deadly weapons in my possession, or in the possession of others for me, in violation of the laws of the University and the State.

Signature (full name) —— ——.

Age —. Postoffice ——.

County ——, date —— —, 191–.

Candidate for degree of ——.

Indicate in the form below the classes elected for the session by

writing the name of the subject and class in the first column, and the hours of recitation in the proper space under the abbreviation for the days of the week. Consult Schedule in Catalogue. Instructors will write their initials in the right hand margin opposite the names of their subjects in case they are willing to admit the student to their classes;

Subject and Class.	Mon.	Tue.	Wed.	Fri. & Sat.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Lodging place ——.

I hereby certify that this is a copy of the pledge required of all students who entered the University for Session 1912-13.

D. L. ROSS,
Secretary of University.

16 & 17 STATE OF MISSISSIPPI,
La Fayette County:

Know all men by these presents that we, J. P. Waugh, principal, and T. C. Kimbrough, W. G. Cavett, S. R. Knox, Henry Brück and Jas. R. McDowell, agree to pay the Board of Trustees of the University of Mississippi, and A. A. Kincannon, Chancellor of said University, the sum of Five Hundred Dollars unless the said J. P. Waugh shall pay all such costs and damages as shall be awarded against him in case the injunction granted on the 20th day of December 1912, by the Honorable D. M. Kimbrough, Chancellor of the third Chancery Court District, restraining the said Board of Trustees and A. A. Kincannon from enforcing an order of said Board made September 16th 1912, in the matter of dealing with the societies and fraternities named in the Act of the Legislature of the State of Mississippi, approved February 27th 1912, and requiring a certain pledge, set out in full in said order, to be incorporated in the regular "Application for Admission" to said University; and further restraining said Board from requiring said J. P. Waugh to sign said pledge as a prerequisite for his admission as a student in said University, shall be dissolved.

Signed with our hands and delivered this, the 26th day of December 1912.

J. P. WAUGH.
By T. C. KIMBROUGH, *Att'y.*
T. C. KIMBROUGH.
W. G. CAVETT.
JAS. R. McDOWELL.
HENRY T. BRUCK.

I approve the above bond the 2nd day of January, A. D. 1913.

[SEAL.] W. M. WOODWARD,
Chancery Clerk.

18 STATE OF MISSISSIPPI,
County of Hinds:

Personally appeared before the undersigned, a Notary Public of the City of Jackson, said County and States, J. R. McDowell, who, on oath says, that he is worth, above all other indebtedness, including the other bonds, the sum of Five Hundred Dollars (500.00).

JAS. R. McDOWELL.

Sworn to and subscribed *to* before me, this 23rd day of December, A. D. 1912.

PERCY L. CLIFTON,
Notary Public.

STATE OF MISSISSIPPI,
County of Clay:

Personally appeared before me, L. J. Howard, Chancery Clerk of the County of Clay, State of Mississippi, T. C. Kimbrough, who, on oath, says that he is worth, above all other indebtedness, including all other bonds, the sum of Five Hundred Dollars (500.00).

T. C. KIMBROUGH.

Sworn to and subscribed before me this 26th day of December, 1912.

L. J. HOWARD,
Chancery Clerk.

19 *Demurrer of Defendant. Filed February 3rd, 1913.*

STATE OF MISSISSIPPI,
Lafayette County:

Chancery Court.

No. 4236.

J. P. WAUGH, Complainant,
vs.
BOARD OF TRUSTEES OF UNIVERSITY OF MISS. et al., Defendants.

The Demurrer of Defendants to the Bill Exhibited Against Them by J. P. Waugh.

The said Defendants demur to said Bill and pray the judgment of the Court if they shall make any further answer thereto, and they show the following causes of demurrer to said Bill, to-wit:

1st. There is no equity on the face of the bill.

2nd. If Complainant has any remedy at all, which defendants deny, he has a complete and adequate remedy by law.

3rd. The Courts have no power or authority to enjoin the State Board of Education in the management of the Schools, Colleges, and

Universities entrusted to it, nor to interfere with said Board in the management of said Institutions.

4th. Said Bill shows on its face that the act of the Legislature of the State of Mississippi, Chapter 177 of the Laws of said State, approved February 27th, 1912, is in all respects valid, legal, and constitutional, and is unobjectionable in any respect.

5th. Said Bill shows on its face that said law was passed in pursuance of the Constitutional power and authority of said Legislature and does in no way conflict with either the State or Federal constitution-.

6th. Said Bill shows that the Board of Trustees of the Schools and Universities of the State was acting within the authority of its legally constituted power, and in pursuance of the said act of the Legislature of 1912.

7th. The Courts have no power to declare whether an act of the Legislature, passed in pursuance of its constitutional powers, is unreasonable.

8th. The Legislature alone is the judge of the reasonable-
20 ness or unreasonableness of laws passed and enacted by it.

9th. The said act or law of said Legislature shows on its face that the Legislature of the State, its law-making department has declared that fraternities and sororities, or Greek letter societies, etc., are inimical to the welfare and success of said Schools, Colleges and Universities and in pursuance thereof abolished said societies and prohibited the existence of said societies in the University of Mississippi and all other Educational Institutions supported in whole or in part by the State, and the Courts have no power to alter, to change, to modify, or to set at naught the expressed will of the Legislative Department of the State.

10th. Said Bill shows on its face that the said Board of Trustees and the Chancellor of the University of Mississippi were acting strictly within their delegated powers, and in pursuance of direct authority not only conferred, but commanded, by the Legislature of the State.

And for other causes to be shown at the hearing.

Wherefore the Defendants pray the judgment of the Court if they shall be required to make any further answer to said bill.

WM. C. McLEAN,
Solicitor for Def'ts.

I, William C. McLean, Solicitor for Defendants in the above stated cause, do hereby certify that in my judgment said demurrer is well taken.

WM. C. McLEAN.

Motion of Defendant to Strike Out Paragraph, Filed Feb. 3rd, 1913.

STATE OF MISSISSIPPI,
Lafayette County:

Chancery Court.

No. 4236.

J. P. WAUGH, Complainant,
vs.
BOARD OF TRUSTEES OF UNIVERSITY OF MISSISSIPPI et al., Defendants.

The said Defendants, by Solicitor, come and move the Court to strike from the bill the following paragraph, towit:—as found on pg. 8:

"That the said Kappa Sigma Fraternity, of which complainant is a member, has for its paramount purposes, the promotion and
21 enforcement of good morals, the highest possible attainment and standing in the classes, and good order and discipline in the student bodies of the different colleges with which it is connected."

WM. C. McLEAN,
Solicitor for Defendants.

Final Decree, Filed May 2nd, 1913.

In the Chancery Court of the County of Lafayette, State of Mississippi. Vacation, 1913.

Hon. T. L. Lamb, Special Chancellor.

No. 4236.

J. P. WAUGH, Complainant,
vs.
BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI and A. A. Kincannon, Chancellor of the University of Mississippi, Defendants.

Decree.

This cause comong on to be heard on this the 1st day of May 1913, on original Bill of Complainant, and the demurrer of the defendants to the said original Bill, and the motion of the Defendants to strike out certain allegations of the bill, and thereupon the attorneys for the Complainant and the attorneys for the Defendants appearing before the Court and consenting to the hearing of the said cause on said date, and the argument of counsel for Complainant and Defend-

ants having been heard by the Court on the 1st day of May 1913, and the second day of May, said year, and it appearing to the Court that the act of the Legislature of the State of Mississippi known as Chapter 177 of the Laws of Mississippi of 1912, approved February 27th, 1912, entitled an act to abolish and prohibit Greek Letter Fraternities or Sororities and all secret orders among the students in the University of Mississippi, and in all other educational institutions supported in whole or in part by the State, providing penalties for any trustee, teacher or other officer connected with the Institution for failure or refusal to enforce the provisions of this act, Providing penalties for any student who knowingly violates the provisions of this act; and empowering the Board of Trustees of the University to purchase all buildings now owned by any of the said orders, is in violation of the Constitution of the State of Mis-
22 sissippi and in violation of that paragraph of Section 1 of article fourteen of the Constitution of the United States, which provides that the State shall deny to any person within its jurisdiction the equal protection of the laws; and it further appearing to the Court that the order of the Board of Trustees of the University of Mississippi adopted September 16th, 1912, is ultra vires, unreasonable and void; and it further appearing to the Court that the motion of Defendants to strike out certain allegations of Complainant's original Bill recited in said Motion is not well taken; and it being agreed by both Complainant and Defendants that the said demurrer to the said original bill of complaint, and the said motion to strike out certain averments of said bill be submitted together; it is ordered, adjudged and decreed that the said motion be over-ruled, and that said demurrer to complainant's bill be and the same is hereby over-ruled and said act of the Legislature be declared unconstitutional, null and void. It is further ordered that the said order of the Board of Trustees of the said University of Mississippi, made and entered on the 16th day of September 1912, a certified copy of which is filed as an exhibit to the original bill, be declared void and held for naught. And thereupon the defendants declining to plead further; It is ordered that the injunction granted on the 20th day of December, 1913, by D. M. Kimbrough, Chancellor, be and the same is hereby made perpetual; to all of which rulings by the Court, the defendant then and there excepted. And the Defendants praying an appeal to the Supreme Court of the State, it is ordered that said appeal be granted to settle the principles of the cause.

Ordered, adjudged and decreed in this the 2nd day of May, 1913.

T. L. LAMB,
Special Chancellor.

23 *Petition for Appeal, Filed May 2, 1913.*

No. 4236.

J. B. WAUGH
vs.
BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI and A. A. Kincannon, Chancellor of the University of Mississippi et al., Def'ts.

To the Honorable Chancery Court of La Fayette County, Mississippi:

The Defendants in the above stated cause feeling aggrieved by the decision of the Chancellor overruling the Demurrer of the said Defendants to the bill of complaint, in the above stated cause hereby petition for and pray an appeal to the Supreme Court of the State returnable as prescribed by law.

BOARD OF TRUSTEES OF UNIVERSITY OF MISSISSIPPI,
A. A. KINCANNON,
Chancellor of said University,
EARL BREWER,
Governor of the State,
J. N. POWERS,
O. F. LAWRENCE,
T. W. CARTER,
E. M. CLARK,
ROB'T POWELL,
J. W. CUTRER,
F. C. HOLMES,
D. L. ROSS,
Trustees of the State Board of Education,
By WM. C. McLEAN, *Solicitor.*

Agreement of Counsel for Complainant, Filed May 2nd, 1913.

No. 4263.

J. P. WAUGH, Comp't,
vs.
TRUSTEES OF UNIVERSITY.

I, the undersigned attorney for Comp't in the cause hereby agree to waive issuance and service of notice of appeal by Def't in the above entitled cause and to enter my appearance in the Supreme Court of this State, and this may be made a part of the record. Witness my signature this the 2nd day of May, 1913.

A. F. FOX,
Attorney for Comp't.

24 STATE OF MISSISSIPPI,
County of Lafayette:

I, W. M. Woodward, Clerk of the Chancery Court of La Fayette County, in said State, do hereby certify that the foregoing 23 pages are a true and correct copy of all the papers in the case No. 4263, J. P. Waugh, Complainant, vs. Trustees of University et al., Defendants, except the injunction bond. Said injunction bond is sent herewith.

Given under my hand and official seal at Oxford, Mississippi, this the 15th day of May A. D. 1913.

[SEAL.] W. M. WOODWARD,
Chancery Clerk.

25 STATE OF MISSISSIPPI:

Supreme Court, May Term, 1913.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI et al., Appellants,
vs.
W. P. WAUGH, Appellee.

Assignment of Errors.

Now come the Appallants and file the following assignment of errors, to-wit:

First. The lower court erred in holding that the Act of the legislature, Chapter 177 of the Laws of 1912, is violative of Section One of Article 14 of the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws and in violation of the State Constitution.

Second. In holding that the order of the Board of Trustees of the University of Mississippi, adopted September 16th, 1912, is ultra vires, unreasonable, and void.

Third. In declining to sustain the motion of defendants to strike out certain allegations of complainant's original bill.

Fourth. In overruling the demurrer of defendants to said original bill.

And for other causes to be shown on the argument.

WM. C. McLEAN,
Attorney for Appellants.

I, Wm. C. McLean, attorney for appellants in the above stated cause, do hereby certify that I have this day mailed, properly addressed, postage prepaid, copy of the foregoing assignment of errors to Hon. A. F. Cox, West Point, Mississippi, attorney for appellee.

WM. C. McLEAN,
Attorney for Appellants.

26 *Decree of the Supreme Court of Mississippi.*

March Term, 1913, Monday July 14, 1913.

No. 16700.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI and A. A. KINCANNON, Chancellor,

vs.

J. P. WAUGH.

This cause having been submitted on a former day of this term, on the record herein, from the Chancery Court of Lafayette County, and this Court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 2nd day of May, 1913, be and the same is hereby reversed and bill dismissed, and that the Appellee do pay the costs of this cause in this Court and in the Court below to be taxed, etc.

27 BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI et al.

vs.

J. P. WAUGH.

R. B. MAYES, *Special J.:*

The legislature of 1912 passed an Act entitled "An act to abolish and prohibit Greek letter fraternities, sororities and all secret orders among students in the University of Mississippi and in all other educational institutions supported, in whole or in part, by the State, providing penalties for any trustee, teacher or other officer connected with the institution for failure or refusal to enforce the provisions of this Act; providing penalty for any student who knowingly violates the provisions of this Act, etc." See Chapter 177, Laws of 1912, page 192.

For purposes of decision we deem it unnecessary to set out the Act in full. We shall content ourselves with setting out in the opinion only the particular sections of the Act which are involved in this controversy. These sections are 1, 2, 3 and 4.

By Section 1 it is provided that the fraternities and sororities, or Greek letter societies known as "Delta Kappa Epsilon", etc., and all other secret orders, chapters, fraternities, sororities, societies and organizations, or whatever name, or without a name, of similar name and purpose, among students are hereby abolished and further prohibited to exist in the University of Mississippi and in all other educational institutions supported, in whole or in part by the State.

Section 2 provides that no student in the University, or in any other educational institution supported, in whole or in part, by the State, who is a member of any of the orders, chapters, fraternities, sororities, societies and organizations hereby prohibited, shall
28 be permitted to receive any class honors, diplomas or distinctions conferred by the institution of which he is a stu-

dent, nor to compete nor contend for any prize or medal offered by his respective school, or by any association or individual. But any student who is a member of any of the orders, chapters, fraternities, sororities, societies or organizations aforesaid may, upon entrance to any of the aforesaid schools, file with the chancellor, president or superintendent, as the case may be, an agreement in writing that he will not, during his attendance at said school, affiliate with same, nor attend their meetings, nor in any wise contribute any dues or donations to them, and, thereafter, so long as such agreement is complied with in good faith, such student shall not be subjected to the restrictions created by this section.

Section 3 commands that the Act shall be enforced by the trustees and faculties by such rules and punishments as they may prescribe.

Section 4 provides that any member of the board of trustees of faculty or any other officer connected with any educational institution supported, in whole or in part, by the State, who shall knowingly permit any violation of this Act, and — such fail or refuse to take proper steps to enforce this Act shall be removed from such position by the Governor.

Let it be here noted that the enforcement of this Act is imposed upon the trustees and faculties of the educational institutions of the State, and they are required to do it by such rules and punishments as they may prescribe. Let it be further noted that Section 4 emphasizes the duty of the trustees and faculties to enforce the Act by providing that if they fail or refuse to take proper steps to enforce it they shall be removed from their position by the Governor.

When the above Act is read it discloses the fact that in
29 its passage the legislature had two purposes in view. The primary purpose was to prohibit the existence of any secret society at the University of Mississippi, or any other educational institution supported by the State. Its second purpose is to prohibit any student in any of the above institutions continuing to hold membership in any secret society, or affiliating with same in any way, after admission to the educational institutions of the State, from receiving any class honors, diplomas, distinctions, etc., or for competing for any prize or medal at any of such institutions, unless the student will file with the chancellor, president or superintendent an agreement that he will not during his attendance at any such school affiliate with any of the prohibited secret societies, nor attend any of their meetings, nor contribute in dues or donations while he is a student at any of the educational institutions above named.

The enforcement of the act is committed to the rules prescribed by the trustees and faculties, and it is made their imperative duty, under penalty of removal from office, to see that the Act is enforced. In order to carry out the duty which the legislature imposed upon them of enforcing the Act, the trustees by an order placed upon their minutes at the September meeting in 1912, made it a condition precedent to the right of any student to enter the University, that each student making an application for admission should be required to sign the following statement:

"I hereby state and affirm upon my honor that I am not now

pledged to become a member of any of the Greek letter fraternities, societies or sororities named in the Senate Bill 227 of the Laws of Mississippi, 1912, pages 192 and 193, Chapter 177, and that I have not become a member of any of said fraternities, sororities, or societies within the sixty days preceding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University, and that
30 I will not aid or abet or encourage the organization or perpetuation of any such orders or societies while I am a student of the University.

I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any way be the beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.

I furthermore promise and pledge to regard this obligation as binding between the sessions of 1912-13 and 1913-14 and that it shall be my purpose and constant endeavor to so act that no word or deed of mine could be even remotely construed as being violative to the letter and the spirit of what is known as the 'Anti-Fraternity Bill', passed by the last legislature and approved by the Governor February 27, 1912."

When the order of the trustees is examined it is readily seen that the pledge which the student is required to sign is nothing more than that he will comply with the Act of the legislature while he is in the institution. If the statute is constitutional, it occurs to us that the trustees adopted the only practicable way they could by enforcing the Act of the legislature. The Act is a mere disciplinary regulation. It was the judgment of the legislature that all secret orders were detrimental to the welfare of the educational institutions of the State. These educational institutions are under the control of the legislature. It had the power to create and abolish them and, having the power to create and abolish, it had the power to regulate; and when the legislature has passed a law disciplinary in its nature, controlling and regulating any subject which it considered to be inimicable to the welfare of the institution, it is certainly not within the power of any court to supervise the wisdom of legislative
31 acts and declare its acts unenforcible, merely because it might be the view of the court that the act was unwise and unnecessary. All acts of a legislature are valid unless they conflict with the Constitution of the State or United States, and the acts of the legislature are to be upheld by the courts, unless it is plainly apparent that they conflict with the organic law, after solving all doubts in favor of the validity of the law. Announcing this rule of construction as our guide, a rule that has been repeatedly announced by this Court, we proceed to discuss further the Act of the legislature under review, and the order of the trustees in pursuance of the Act.

It appears from the complaint that some time after the legislature passed the law and after the board of trustees, in order to carry out the act of the legislature, had passed the above order requiring this pledge to be taken, the complainant made application for admission

to the University and was declined admittance because he refused to sign the pledge which the trustees said he should sign before he should enter the University. When this was done complainant made application to the Chancery Court of Lafayette County for an injunction against the board of trustees of the University of Mississippi, asking that the court enjoin them from enforcing the order and require them to refrain from requiring him to sign the pledge incorporated in the application for admission to the University as a student; and prayed further that upon final hearing the Act of the legislature in question be declared unconstitutional as being in conflict with *both* the Constitution of the United States, and that the order of the board be declared to be unreasonable, and ultra vires, etc. The application for the injunction sets out the fact that the University of Mississippi was incorporated in 1844, and stated many features of the incorporating act, which we deem unnecessary
32 to rehearse here. The complaint then sets out the Act of the legislature in full, and alleges that the complainant is now, and has been for several years, a member of what is known as the Kappa Sigma fraternity, and is affiliates and identified with the Chapter at Millsaps College; that the Kappa Sigma fraternity is one of the fraternities embraced in the above recited Act. The complaint then sets out the order of the board of trustees, and alleges that in November, 1912, he applied to the Chancellor of the University for admission as a student, and that the Chancellor presented him with the pledge required to be signed by students desiring to enter the University and requested him to sign as a prerequisite to admission as a student to the University; that complainant refused to do this, and the Chancellor thereupon refused to admit him as a student in the University, and that the refusal was based alone upon the ground that complainant refused to sign the pledge. Complainant then alleges that he has never been a member of, nor has he affiliated with, or paid dues to, any Chapter of any so-called Greek letter fraternity organized among the student body of the University. Complainant then alleges that he is affiliated with, and pays dues to, the Chapter of the Kappa Sigma fraternity at Millsaps College, and alleges that if he is admitted as a student at the University it is not his intention or purpose to encourage the organization, continuance, or maintenance of any Greek letter fraternity in the University of Mississippi, or to affiliate with or pay dues to or in any way support or encourage any such organization at the University, or be connected with any sort of active work, or meeting with any fraternity in the University.

He then alleges that the act of the legislature is in conflict with the Constitution of the State of Mississippi and the Constitu-
33 tion of the United States; that it violates Section 71 of the Constitution of the State in that the title is not sufficient; that the Act is further violative of Sections 1 and 2 of the Constitution of the State of Mississippi, in that under the Charter of the University and all statutes relating to it, the government and discipline of the University, and the control of its students, is delegated to a board of trustees, and that such control is an executive and not a legislative

function; that under Section 2 of the Constitution of the State all power properly belongs to the board of trustees, and the legislature has no control over it; that as a citizen of the United States and the State of Mississippi, within the jurisdiction of the State, under the Fourteenth Amendment to the Constitution of the United States, he is entitled to the protection of life, liberty and property, and the pursuit of happiness, and entitled to the equal protection of the law, and that the above act of the legislature and the regulations of the board of trustees of the University of Mississippi, refusing him admission to the University, deprives him of his property, property rights, and liberty, and denies him the equal protection of the law.

Complainant then proceeds to allege that the fraternity of which he is a member has for its paramount purpose the enforcement and protection of good morals; the highest possible attainment and standing in class, good order and discipline in the student body of the different colleges with which it is connected, and that Section 2 of the Act of the legislature is unreasonable in that it assumes extra-territorial jurisdiction in prohibiting any member of any fraternity not connected with the University from receiving any class honors, diplomas, distinctions, etc., conferred by the University, and because it prohibits any student of the University from affiliating with, or paying dues to, any Chapter whatever wherever situated, although entirely disconnected with the University.

34 This bill was demurred to on many grounds but we see no occasion to go beyond the first. The first ground of the demurrer challenges the fact that there is any equity on the face of the bill. We think this challenge brings into review at once the whole of this case.

Counsel for appellee stress the fact that the demurrer admits all the allegations of the bill, and call the court's attention to the allegation wherein the high moral purposes of the order to which complainant belongs is set out, and argues, that whatever the general result may be, that this case is bound to be affirmed, because with these admissions an institution cannot drive out of its halls, even before an act of the legislature, an order that is fruitful of so much good as is claimed for the order to which complainant belongs.

But let it also be kept in mind that the court takes judicial knowledge of the law and reads into every alleged complaint of the law of the land, and where the thing complained of and against which relief is sought is a thing which the law prohibits the complainant from doing, the court will not grant relief merely because complainant alleges that if allowed to do the thing which the law says he must not, a great moral good will be accomplished. The allegation of fact amounts to nothing when it merely shows that a complainant is seeking to disobey the law, no matter how strong the allegation that a great good will be accomplished if allowed to violate the law. We think this ends any discussion as to any admission of fact made by the demurrer.

In answer to that portion of the argument made by counsel for appellee that the act is void because the title is bad, we need only cite the case of Mayor, etc., vs. City of Jackson, 59 S. R. 873, hold-

ing that the sufficiency of the title is a legislative and not a judicial question.

35 A further contention of appellee is that the act of the legislature violates Sections 1 and 2 of the Constitution. We fail to see how the act of the legislature violates either section above named. Section 1 of the Constitution merely provides for the distribution of the powers of government into three distinct departments, and Section 2 prohibits any person, or collection of persons, being one or belonging to one of these departments of government from exercising any powers properly belonging to either of the others. We do not see how either of these sections is invalid by this Act. The legislature did nothing but pass a law for the regulation of the educational institutions of the State, and why it may not do so is something that a reading of the Sections of the Constitution above referred to does not disclose to us.

The trustees are mere instruments to carry out the will of the legislature in regard to the educational institutions of the State. Both the institutions and the trustees are under the absolute*ly* control of the legislature. The legislature has the undoubted power to pass a law prohibiting Greek letter fraternities from being organized or carried on at any educational institution in the State. The legislature has the right to say that any student desiring to enter any educational institution of the State shall renounce his allegiance to any Greek letter fraternity, while he is a student in the State institution. The law requires the trustees of the educational institutions of the State to see that this Act is enforced, and in order to do this, they have a right to exact of any student who desires to enter, as a condition precedent to his entry, that he will promise to obey the statute law of the State, and this is all that the trustees have required. If complainant desires to enter the University, all he has to do is to promise obedience to the law of the State and the doors of the University will be open to him.

36 But complainant says that by requiring him to sign a pledge to obey the law of the State while he is a student in the educational institutions of the State, and to renounce his allegiance to, and affiliation with, secret societies at other institutions, he is denied a right guaranteed to him by the Fourteenth Amendment to the Constitution of the United States. We fail to see any force in this contention. The Fourteenth Amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wanted to take advantage of the gratuitous advantages offered the youths to obtain an education, and yet refuse to obey and submit to the disciplinary regulations enacted by the legislature for the welfare of the institutions of learning. The right to attend the educational institutions of the State is not a natural right; it is a gift of civilization; a benefaction of the law. If a person seeks to become a beneficiary of this gift, he must submit to such conditions as the law imposes as a condition precedent to this right. The Act in question is not class legislation. It is quite the reverse and seeks to destroy the possibility of the existence of any class at the educational institutions. No State or Federal Constitu-

tion is violated by this Act in any way. Complainant is not deprived of any constitutional right, unless complainant can be said to have a constitutional right to breach the discipline of the school, and set at naught the laws of the State. If it be true that the Board of Trustees, or the legislature, have extended the operation of the rule beyond what would seem to be the necessities, they have done it in order to effectuate the purpose of the legislature in prohibiting the existence of Greek letter fraternities at any of the educational institutions in the State. The trustees, and the legislature, both have the right to say that any student who desires to enter the Universiy shall not only promise not to affiliate with any Greek letter fra-
37 ternity while there, but that he shall not encourage the organization of any Greek letter fraternity elsewhere, by paying dues, etc. while a member of that institution. If this were not true, there might be organized at the University, although the dues were paid elsewhere, as complete a Greek letter fraternity, save the meetings, as if it were organized at the institution. Young men attending the educational institutions of the State, if allowed to hold their memberships in fraternities at other institutions while attending the State institutions, could as effectually carry on their fraternity relation as if an organization existed at the particular place. The legislature knew this, and to make the law effective, prohibited all affiliation with secret societies while a student at a State institution.

In the case of Purity Tonic Extract Co. v. Lynch, 56 S. R. 316, the Supreme Court of this State and of the United States, held that the legislature might, in order to make a police regulation effective, press the Act beyond the seeming necessities in order to effectuate its purpose.

The case of Germany v. Hobbs, in 94 Miss., 469, is not a parallel case to this. The trustees in that case were not acting under the power conferred upon them by an act of the legislature; they were not trying to break up any secret orders; but the trustees of the public schools, *to* which a child has a constitutional right to attend between certain ages, undertook to say that after the child had reached its home it should not be controlled by its own parents, but that they would establish rules that would reach into the fireside and control the child around the hearth-stone of its own parents. This court said this could not be done. Many decisions are cited by ap-
pellee, but we refuse to follow any decision that would hold
38 this Act unconstitutional. We can see nothing in the Act which is violative of any section of the Constitution. Whether the Act was a wise one, or an unwise one, was a question for the legislature to determine. The legislature is in control of the colleges and universities of the State, and has a right to legislate for their welfare, and to enact measures for their discipline and to impose the duty upon the trustees of each of these institutions to see that the requirements of the legislature are enforced; and when the legislature has done this, it is not subject to any control by the courts.

The decree of the court below is reversed, the demurrer sustained, and the bill dismissed.

39 In the Supreme Court of the State of Mississippi, March Term, A. D. 1913.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI
vs.
J. P. WAUGH.

Petition for Writ of Error.

Now comes J. P. Waugh, the appellee herein, a resident citizen and taxpayer of Holmes County, Mississippi, and respectfully represents, as follows:

That heretofore, on the 14th day of July, 1913, the Supreme Court of the State of Mississippi reversed a decree of the Chancery Court of Lafayette County, Mississippi, duly removed from said Chancery Court by appeal under the laws of the State of Mississippi to the Supreme Court, and that said Supreme Court was the highest court of law or equity having jurisdiction of said cause under the laws of said State.

That in said cause appellee there, and plaintiff in error here, J. P. Waugh, duly and regularly set up and claimed that his certain rights be enforced by said Court under and by virtue of the 14th Amendment to the Constitution of the United States, wherein appellant was granted protection of life, liberty and property and pursuit of happiness and equal protection of law, and that his privileges and immunities as a citizen of the United States should not be abridged by any act or law of the State of Mississippi, and wherein he set out that a certain act of the legislature of the State of Mississippi, known as Chapter 177 of the Laws of Mississippi of 1912, approved February 27, 1912, did, without reason, deprive him of his property and property right, liberty and his harmless pursuit of happiness, and did abridge his immunities as a citizen, and did deny his equal protection of the law of the State of Mississippi.

That said Supreme Court of the State of Mississippi being the highest court of law and equity in said State then and there
40 denied the rights and claims of your petitioner under said Amendment to the Constitution of the United States, after said rights had been given petitioner by the Chancery Court of Lafayette County, Mississippi, the court of original jurisdiction, by reversing the decree of said court, as aforesaid, and rendering judgment against him dismissing his said suit.

That then and there said cause being in said Supreme Court of the State of Mississippi the said rights and claims of your petitioner under the Constitution of the United States were duly set up and insisted upon by petitioner, as well as they had been theretofore set up and insisted upon in the said Chancery Court of Lafayette County, Mississippi in said cause, and that then and there said Supreme Court of the State of Mississippi in this cause rendered a decree denying, as alleged by your petitioner, his rights duly set up, and sustaining as valid a certain act of the legislature of the State of Mississippi known as Chapter 177, Laws of 1912, which your

petitioner averred and claimed to be in contravention of said 14th Amendment to the Constitution of the United States, and that said Supreme Court of the State of Mississippi then and there sustained the validity of said statute and denied the rights and claims of your petitioner set up under and by virtue of said provisions of the 14th Amendment of the Constitution of the United States, and that said Supreme Court of Mississippi then and there denied to your petitioner its rights claimed in this regard, and rendered judgment against your petitioner; and your petitioner says that grievous error has therefore been committed, greatly to his detriment and that petitioner is entitled by law to a writ of error to the Supreme Court of the State of Mississippi from the Supreme Court of the United States to correct said errors therein committed as hereinbefore shown.

Wherefore, your petitioner prays that this court grant an order allowing your petitioner to prosecute a writ of error to the Supreme Court of the United States under and by virtue of the laws in this behalf made and provided, and also that an order be made
41 fixing the amount of the bond that plaintiff in error shall be required to give upon said writ of error, and that upon the giving of same all further proceedings shall be stayed and suspended until the termination of said writ by said Supreme Court of the United States. And as in duty bound, etc.

HAMILTON DOUGLAS,
A. F. COX,
W. G. CAVETT,
T. C. KIMBROUGH,
JAS. R. McDOWELL,
Attorneys for Appellee and Plantiff in Error.

42 In the Supreme Court of the State of Mississippi, March Term, A. D. 1913.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI
vs.
J. P. WAUGH.

Order Granting Writ of Error.

Be it remembered that this day the petition of J. P. Waugh came on for hearing and it appearing that said J. P. Waugh did claim rights in this cause in this court under the 14th Amendment to the Constitution of the United States and that said rights were claimed under those clauses of said 14th Amendment requiring equal protection of the law, the denial of the right of any State to deprive any person of life, liberty or property without due process of law or the harmless pursuit of happiness or the right to abridge the privileges and immunities as a citizen of the United States, and that said claim of said rights of said petitioner was made in the Chancery Court of Lafayette County, Mississippi, and again on appeal in the Supreme Court of the State of Mississippi, and by said court de-

nied, and that said Supreme Court of the State of Mississippi is the highest State court having jurisdiction of said controversy, which said controversy presented for consideration questions arising under the Constitution of the United States and amendments thereto, and that same were denied by said Supreme Court of Mississippi, and that said J. P. Waugh has prayed for a writ of error from the Supreme Court of the United States, and that said J. P. Waugh is entitled to have said cause removed on said writ to said Supreme Court of the United States, and then and there to have the writ of error issued, and that the amount of the bond of said petitioner ought to be in the sum of five hundred dollars, to be approved by the Clerk of the Supreme Court of the State of Mississippi; wherefore, let a
43 writ of error issue in accordance with law, upon said J. P. Waugh entering into a bond duly conditioned according to law in the penal sum of five hundred dollars.

Witness my Signature and the Seal of said Court, this 31st day of July, 1913.

SIDNEY SMITH,
Chief Justice of the Supreme Court of Mississippi.

44 (Copy.)

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI
vs.
J. P. WAUGH.

Appeal Bond.

Know all men by these presents: that we, J. P. Waugh, principal, and Jas. R. McDowell, W. G. Cavett, L. L. Mayes, V. Otis Robertson as sureties, are held and firmly bound unto the Board of Trustees of the University of Mississippi, and A. A. Kincannon, Chancellor of said University, the defendant in error, in the sum of Five Hundred ($500.00) Dollars, to be well and truly paid, for which we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

The Condition of this obligation is as follows: whereas, the above named J. P. Waugh has sued out a writ of error to the Supreme Court of the United States to reverse the judgment of the above entitled cause rendered by the Supreme Court of the State of Mississippi; now, therefore, if the above named J. P. Waugh shall prosecute said writ of error successfully, or shall answer all costs and damages which may be adjudged against him in case he should fail to make good his plea, then this obligation shall become void, otherwise to remain in full force and effect.

Witness Our Signatures, this 5th day of August, 1913.

J. P. WAUGH,
By JAS. R. McDOWELL, *Att'y.*
JAS. R. McDOWELL.
W. G. CAVETT.
L. L. MAYES.
V. OTIS ROBERTSON.

I approve the foregoing bond.
This 9 day of August, 1913.

GEO. C. MYERS,
Clerk of the Supreme Court of Mississippi,
By W. J. BROWN, *D. C.*

45 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Supreme Court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of a decree, which is in the Supreme Court of the State of Mississippi before you or some of you, being the highest court of law or equity of the said State, in which a decision of the suit between the Board of Trustees of the University of Mississippi and A. A. Kincannon, Chancellor, appellants and defendants in error, and J. P. Waugh, appellee and plaintiff in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and amendments thereto, and the decision was against the right and title and privilege specially set up and claimed under said clause of said Constitution and amendments thereto, a manifest error has happened to the great damage of said J. P. Waugh, plaintiff in error, as by their complaint appears;

We being willing, that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then and there under your seals, distinctly and openly you send the record and all the proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 30 day of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 9 day of August, 1913.

[SEAL.] L. B. MOSELEY,
Clerk of the United States District Court,
Southern District of Mississippi.

46 In the Supreme Court of the United States.

J. P. WAUGH, Complainant in Error,
vs.
BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI et al.,
Defendants.

Assignment of Errors.

Now comes J. P. Waugh, complainant in error in this court, and respectfully represents unto the court that upon the trial of the above entitled cause in the Supreme Court of the State of Mississippi, divers, grievous and prejudicial errors were committed to the detriment of the complainant in error, and for said errors assigns the following:

1. The Supreme Court of the State of Mississippi erred in reversing the decree rendered by the Chancery Court of Lafayette County, and dismissing complainant's bill, and in not holding that Chapter 177 of the Laws of Mississippi of 1912, approved February 27, 1912, was unconstitutional, null and void, for the reason that it violates the 14th Amendment of the Constitution of the United States whereby complainant, a citizen of the United States, is entitled to protection of life, liberty and property, and the pursuit of happiness, and equal protection of the law, and for the further reason that said law of Mississippi seeks to abridge the privileges and immunities of complainant and other citizens of the United States, in violation of said 14th Amendment.

2. The Supreme Court of Mississippi erred in holding that said statute of Mississippi was valid and did not violate said 14th Amendment to the Federal Constitution, in so far as it deprived complainant of his liberty and property right in and with reference to his right to a legal education at the University of the State, to which complainant, as a citizen and taxpayer of said State, has a legal right.

3. The Supreme Court of Mississippi erred in holding the said statute valid and not violative of the 14th Amendment to the
47 Federal Constitution, in so far as it interfered with complainant's right to his harmless pursuit of happiness and abridged his privileges and immunities guaranteed him by the Federal Constitution.

4. The Supreme Court of Mississippi erred in holding that the State had a right under its police power to pass this statutory regulation which deprives complainant of his property, liberty and the right to the harmless pursuit of happiness and abridges his privileges and immunities as a citizen, in violation of the 14th Amendment to the Federal Constitution.

5. The Supreme Court of Mississippi erred in holding that the various rules and regulations adopted and prescribed by the Board of Trustees and the Chancellor of the University of Mississippi with reference to the admission of students were valid, for the reason that said rules and regulations adopted by said Board, without reason, deprive complainant of his property and property right, and his

liberty and his harmless pursuit of happiness, and deny to complainant the equal protection of the law and abridge his privileges and immunities as a citizen, in violation of the 14th Amendment to the Federal Constitution.

Wherefore, complainant in error prays that the above assigned errors may be inquired of by this Honorable Court and the same corrected in accordance with law.

J. P. WAUGH,
By JAS. R. McDOWELL, *Att'y.*
HAMILTON DOUGLAS,
A. F. FOX,
W. G. CAVETT,
T. C. KIMBROUGH,
JAS. R. McDOWELL,
Attorneys for Complainant in Error.

48 STATE OF MISSISSIPPI,
Supreme Court:

I, George C. Myers, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the courts of said State, do hereby certify the foregoing are full, true and correct copies of all the papers, each and all of them, constituting the record in said Supreme Court of Mississippi in the case of the Board of Trustees of the University of Mississippi and A. A. Kincannon, Chancellor, vs. J. P. Waugh, including the judgment of said Supreme Court, and the opinion in said cause, all of which are now on file in my office, also copies of the petition for writ of error, fiat of the Chief Justice granting same, the appeal bond to the United States Supreme Court, the assignments of error and writ of error.

Given under my hand and the seal of said Supreme Court of Mississippi, at Jackson, Mississippi, this 9 day of August, 1913.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Clerk of the Supreme Court of Mississippi,
By W. J. BROWN, *D. C.*

49 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Supreme Court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of a decree, which is in the Supreme Court of the State of Mississippi before you or some of you, being the highest court of law or equity of the said State, in which a decision of the suit between the Board of Trustees of the University of Mississippi and A. A. Kincannon, Chancellor, appellants and defendants in error, and J. P. Waugh, appellee and plaintiff in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and

amendments thereto, and the decision was against the right and title and privileges specially set up and claimed under said clause of said Constitution and amendments thereto, a manifest error has happened to the great damage of said J. P. Waugh, plaintiff in error, as by their complaint appears;

We being willing, that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then and there under your seal, distinctly and openly you send the record and all the proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 30 day of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 9 day of August, 1913.

[Seal U. S. District Court, Southern District of Mississippi.]

L. B. MOSELEY,
Clerk of the United States District Court,
Southern District of Mississippi.

[Endorsed:] 16700. Board of Trustees of University of Mississippi et al.. v. J. P. Waugh. Writ of Error. Received & filed Aug. 9, 1913. Geo. C. Myers, Clerk. By W. J. Brown, D. C.

50 BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI
vs.
J. P. WAUGH.

Citation.

UNITED STATES OF AMERICA:

The President of the United States to the Board of Trustees of the University of Mississippi and A. A. Kincannon, Chancellor:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the Capitol in the City of Washington, D. C., within thirty days from the date of this writ, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Mississippi, wherein J. P. Waugh is plaintiff in error and you are defendant in error, to show cause if any you can, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 9 day of August, 1913.

[Seal U. S. District Court, Southern District of Mississippi.]

L. B. MOSELEY,
Clerk of the District Court of the United States for the Southern District of Mississippi.

I, Wm. C. McLean, attorney for the Board of Trustees of the University of Mississippi et al. in the above stated cause, do hereby acknowledge service of this writ, and do hereby enter the appearance of the Board of Trustees of the University of Mississippi et al. in the above stated cause in the Supreme Court of the United States.

Witness my signature at Grenada, Misss., this August 18th, 1913.

WM. C. McLEAN, *Attorney.*

Endorsed on cover: File No. 23,843. Mississippi Supreme Court. Term No. 692. J. P. Waugh, plaintiff in error, vs. The Board of Trustees of the University of Mississippi and A. A. Kincannon, Chancellor. Filed August 28th, 1913. File No. 23,843.

21

No. 255

White Supreme Court,
FILED
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JAMES D.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

J. P. WAUGH, PLAINTIFF IN ERROR,

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI ET ALS., DEFENDANTS IN ERROR.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

WILLIAM G. CONDIT,
Solicitor for Plaintiff in Error.

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No. 692.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

J. P. WAUGH, PLAINTIFF IN ERROR,

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI ET ALS., DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

May It Please the Honorable Court:

This *important suit directly* involves Federal constitutional right of *one citizen* and *tax payer* of Mississippi and of the United States, and therefore *indirectly* involves the like rights of *thousands of other citizens* in this state, and a correct determination thereof will be a guiding star as a precedent for this and other states in years to come and a landmark of American liberty by which thousands of citizens will be directed in the

Appian Way to their rights for which our American people have fought and our Republican form of government has stood for ages.

On the 24th of Feb. 1844, the University of Mississippi was incorporated and having received large donations of lands from the United States Government and from appropriations made by the State of Mississippi became a leading educational institution of the Southland and has continued its mission of great usefulness to not only the state but its alumni have filled and are filling many of the highest positions in America.

Almost since the opening of the doors of this great institution Greek Letter Fraternities have existed at the University and with such men as Justices L. Q. C. Lamar, Charles Bowen Howry and thousands of other men who became members of such organizations or associations have materially aided in keeping the institution on a very high plane to which it was so justly entitled.

In 1912 the Legislature by Senate Bill No. 227, Ch. 177, passed the following act:

> "An Act to abolish and prohibit Greek letter fraternities and sororities and all secret orders among students in the University of Mississippi and in all other educational institutions suported, in whole or in part, by the state, providing penalties for any trustee, teacher or other officer connected with the institution for failure or refusal to enforce the provisions of this Act; providing penalty for any student, who knowingly violates the provisions of this Act; and empowering the Board of Trustees of the University to purchase all buildings now owned by any of said orders.

To prohibit Greek letter fraternities and societies in State educational institutions.

Section 1. Be it enacted by the legislature of the State of Mississippi, that the fraternities and sororities or Greek letter societies, known as 'Delta Kappa Epsilon,' 'Delta Psi,' 'Delta Tau Delta,' 'Sigma Chi,' 'Kappa Alpha,' 'Phi Kappa Psi,' 'Sigma Alpha Epsilon,' 'Phi Delta Theta,' 'Chi Omega,' 'Tau Delta Theta,' and all other secret orders, chapters, fraternities, sororities, societies and organizations of whatever name or without a name, of similar name and purpose, among students are hereby abolished and further prohibited to exist in the University of Mississippi and in all other educational institutions supported, in whole or in part, by the State.

Students joining same barred from class honors, etc.

Sec. 2. That no student in the University, or in any other educational institution supported, in whole or in part, by the State, who is a member of any of the orders, chapters, fraternities, sororities, societies and organizations hereby prohibited shall be permitted to receive any class honors, diplomas or distinctions conferred by the institution of which he is a student, nor to compete nor contend for any prize or medal offered by his respective school, or by any association or individual. But any student who is a member of any of the orders, chapters, fraternities, sororities, societies or organizations aforesaid may, upon entrance to any of the aforesaid schools, file with the chancellor, president or superintendent, as the case may be, an agreement in writing that he will not during his attendance at said school, affiliate with same nor attend their meetings nor in any wise contribute any dues or donations to them, and thereafter, so long as such agree-

ment is complied with in good faith, such student shall not be subjected to the restrictions created by this section.

Trustees and faculties to enforce this Act.

Sec. 3. This Act shall be enforced by the trustees and faculties by such rules and punishments as they prescribe. Officers permitting violations of this Act to be removed.

Sec. 4. Any member of the Board of Trustees, faculty or other officer connected with any educational institution supported, in whole or in part, by the State, who shall knowingly permit any violation of this Act and shall fail or refuse to take proper steps to enforce this Act, shall be removed from such position by the Governor.

Institutions may purchase buildings owned by societies.

Sec. 5. The Board of Trustees of the University of Mississippi are hereby authorized and empowered to purchase any and all buildings now owned by any of said orders, chapters, fraternities, sororities, societies and organizations aforesaid, if the owners thereof desire to sell the same, and to pay for any and all such buildings a fair and reasonable price out of any money appropriated for that purpose.

Sec. 6. That this Act take effect and be in force from and after its passage."

On the 27th of March, 1912, the Board of Trustees of the University being embarrassed and directed to enforce the said Act under penalty of removal from office by the Governor, passed the following order, to-wit:

"There is this day filed with the Board a petition, addressed to the chancellor of the University,

signed by C. S. Leavell, M. S. Connor and six others, students of the University, stating that they have been law abiding students and loyal to the University. In the matter of this petition the following motion was made and carried: The Board desires it understood that the Anti-Fraternity law passed by the Legislature but recently adjourned, is not construed by it to apply to students already entered and who conduct themselves with that decorum always expected of Southern gentlemen." See Exhibit A to bill.

On Sept. 16th, 1912, the Board of Trustees being directed and driven by said Act of the Legislature to enforce same or suffer removal from office passed the following rule or test oath, to-wit:

"In the matter of dealing with the societies and fraternities named in Senate Bill 227 and approved by the Governor February 27, 1912, it was ordered that the following be incorporated in the 'Application for Admission' to the University: 'I hereby state and affirm upon my honor that I am not now pledged to become a member of any of the Greek letter fraternities, societies or sororities named in Senate Bill 227 of the 'Laws of Mississippi, 1912,' pages 192 and 193, Chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within the sixty days preceding the opening of the session of 1912-13. I further pledge and promise not to join any such organization while I am a student of the University and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies while I am a student of the University. I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any (way) be

the beneficiary of any student's self help fund, or to accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.

I furthermore promise and pledge to regard this obligation as binding between the sessions of 1912-13 and 1913-14 and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative of the letter and the spirit of what is known as the 'Anti-Fraternity Bill' passed by the last Legislature and approved by the Governor Feb. 27th, 1912.' "

See Exhibit B to bill.

On the .... day of Nov., 1912, J. P. Waugh, a citizen of Homes County, Mississippi, and of the United States, and a tax payer of said state applied to the University for admission as a student in the Law Department of said University. It was made a *condition precedent* to his admission that he execute said pledge or *affirmation*, which he refused to do, and thereupon the said University refused him admission to said public institution as a student *solely* for the reason he would not execute and keep said affirmation or pledge.

Therefore the said J. P. Waugh, on the 20th day of Dec., 1912 filed his original bill against the trustees of the University *et al.*, pointing out at length the unconstitutionality of said Act of the Legislature and said pledge or affirmation, and the Chancery Court was asked to enjoin said trustees from enforcing said Act and affirmation and declare both unconstitutional and void (Tr. of Record 3 to 12).

Defendants appeared on Feb. 3rd and filed a demurrer to the bill (Tr. of Rec. 13 & 14).

At the hearing of this cause before the learned Special Chancellor, T. L. Lamb, on the 2nd of May, 1913, the court overruled said demurrer. The defendants *refused to plead further* and the court decreed said injunction be made perpetual and held said act and pledge unconstitutional and void. The Supreme Court of Mississippi reversed the action of the chancellor and dismissed complainant's bill.

62 So. Rep. 827, 104 Miss. .....

Writs of error were then sued out to this Honorable Supreme Court (Tr. of Rec. 30, 31).

Jurisdiction.

Since the case of *Hobbs* v. *Germany*, 94 Miss. 469, 49 So. Rep. 515, 22 L. R. A. N. S. 983, there can be no doubt as to complainant's right and remedy in the chancery court in Mississippi.

See also:

Cross v. *Walton G. C. School Dist.*, 129 Ky. 35, 110 S. W. 346, 33 Ky. L. Rep. 472.

Mizner v. *Sherman Co. S. Dist.*, 2 Neb. 238, 96 N. W. 128, 1006.

Covington Bd. v. *Booth*, 110 Ky. 807, 62 S. W. 872, 23 Ky. L. Rep. 288, 53 L. R. A. 787.

Jurisdiction in Supreme Court of United States.

"This court has judgment to review the state judgment in this case to ascertain whether it de-

prives defendants of any right, privilege, or immunity set up by them under the Federal Constitution."

Henderson Bridge Co. et als. v. City of Henderson, 173 U. S. 592, 43 L. Ed. 823.

United States courts have heretofore enjoined state officials from obeying laws which were unconstitutional.

Osborn v. Bank, 9 Wheaton, 238.
Davis v. Gray, 16 Wall. 205.
U. S. v. Lee, 106 U. S. 196, 1 Sup. Ct. Rep. 240.
Home Tel. & Tel. Co. v. Los Angeles, 227 U. S. 278, 57 L. Ed. 510.

ASSIGNMENT OF ERRORS.

1.

The Supreme Court of Mississippi erred in reversing the decree of the Chancery Court of Lafayette County, Mississippi, and in dismissing complainant's bill, and in not holding that Chapter 177 of the Laws of Mississippi of 1912, approved February 27th, 1912, was unconstitutional, null and void, and in not holding that the pledge or test oath required of the complainant to execute as a condition precedent to admission by the registrars of state power was unconstitutional, null and void, for the reason that both the law and the oath or pledge are in violation of the 14th Amendment of the Constitution of the United States, whereby complainant, a citizen of the United States, is entitled to protection of *life, liberty and property and the pursuit of happiness*, and the *equal protection of the law*, and for the further reason that said law and test oath abridge and destroy the *privileges and immunities* of complainant and other citizens of the United States, in violation of said 14th Amendment (Tr. of Rec. 30).

2.

The Supreme Court of Mississippi erred in holding that said statute and said oathe or test oath of the state registrars of power were valid and did not violate said

14th Amendment to the Federal Constitution, insofar as it deprived complainant of his *liberty and property right,* the *equal protection of the laws,* and *harmless pursuit of happiness* in and with reference to his right to a legal education at the University of the state, to which complainant, as a citizen and taxpayer of said state, has a legal right (Tr. of Rec. 30).

3.

The Supreme Court of Mississippi erred in holding that the said state had a right under its police powers to pass this statutory regulation and test oath which deprive complainant of his property rights, liberty, harmless pursuit of happiness, equal protection of the laws and abridges the privileges and immunities guaranteed him by said Federal Constitution in said 14th Amendment (Tr. of Rec. 30).

Supreme Court of Mississippi erred in not
ng said act and test oath unconstitutional and
for said act and test oath as construed by the
Supreme Court reposited power in the Board of
ees and the Faculty to unlawfully discriminate
st Mr. Waugh and other citizens, and said Board
aculty did invidiously discriminate against Mr.
and numerous citizens, and thereby deprived him
roperty and property rights without due process o
he privileges and immunities of free citizens of
nited States, denied him the equal protection of
the harmless pursuit of happiness and the libert
nteed him under the Federal Constitution.
Tr. of Rec. 3 to 12, 30, 31.

BRIEF AND ARGUMENT.

The *sole* question for this Honorable Court's determination is one of *law* and not of *fact*.

Since the landing of the Mayflower, and since the adoption of the Constitution of the United States in 1787, the *direct question* herein presented, so far as the law books advise us, has heretofore only arisen once.

That case arose in Indiana in 1882, *State ex rel. Stallard* v. *White et als.*, 82 Ind. 278, 42 Am. Rep. 496, and involving such important rights of a citizen as it did and after being presented by *seven* of Indiana's learned lawyers on behalf of the student who was refused admission, and defended by *nine* lawyers of like ability for the trustees of Perdue University, the court in an able opinion by Justice Niblack concurred in by Justice Howk and Ch. J. Worden, held:

> "The trustees and faculty of a public university may not refuse admission or exclude students because they are members of a Greek letter fraternity or other college society."

A petition for a rehearing was presented in that case and after duly considering same it was denied.

Said the court in the above case (page 500, italics ours).

> "Perdue University constitutes no part of our system of common schools, and has no direct connection with that system; but it is an institution of

> learning primarily endowed by Congress, and continued in existence very largely by appropriations made by the general assembly of this State. It is therefore an educational institution *sustaining relations to the people at large* analogous to those occupied by other public schools and colleges of the State, *maintained at public expense, and one in which all the inhabitants of the State have a common interest.*"

This is true of the University of Mississippi. By the Acts of Congress, approved Feb. 20th, 1819, and June 20th, 1894, two townships of land were granted by the United States Government to the University of Mississippi for its support and maintenance, and the State has made annual appropriations of the state's taxes and income for the support of the University, and therefore *every white citizen of the state has a common interest* in this institution, whether or not he be a member of any fraternity, church, association or organization, and is entitled to *equal enjoyment* of its offices.

Under Mississippi's Constitution separate schools are provided for the races.

In the above case it was alleged (page 499) that Stallard was a member of the Sigma Chi fraternity, one of the "Greek Fraternities" and "that the tendency of such societies is to promote the moral and educational interests of its members, the true interest of learning, and the highest and best interests in every department of the institutions with which they are connected."

In the *instant case* it is alleged (*and is confessed as true by the demurrer*, which was overruled and *when de-*

fendants refused to plead further), "That the said Kappa Sigma Fraternity, of which complainant is a member, has for its paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standing in the classes, and good order and discipline in the student bodies of the different colleges with which it is connected."

The Indiana Court in disposing of this question (page 503) said:

> "If mere membership in any of the so-called Greek fraternities may be treated as a disqualification for admission as a student in a public school, then membership in any other secret or similar society may be converted into a like disqualification, and in this way discriminations might be made against large classes of the inhabitants of the State. in utter disregard of the fundamental ideas upon which our entire educational system is based."

See also:

State v. *Julow*, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 259.

Can the Legislature declare that being a member of a Greek letter fraternity is per se a nuisance, as a matter of law, when as a matter of fact it is for the promotion and enforcement of the best morals, the highest possible attainment and standing in the classes, and good order and discipline in the student bodies?

We earnestly and confidently insist that it is neither in the wisdom nor power of any law making body—legislative department of government to invade the prov-

ince of the courts—the judicial and supreme department of government, and declare and make final that for any citizen to be a member of an association or fraternity which has for its *paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standing in classes, and good order and discipline in student bodies, is per se* a nuisance, and thereby stamp such a stain, brand, degradation on such a citizen as to shear and deprive him of the rights of the state institutions for which *he is taxed to support*, and thereby deprive or disfranchise him of *equal rights* with other citizens of like morals and high standing in the state.

This is what is attempted in the Act of the Legislature and the rule test oath, or order passed by the trustees to enforce same, and is therefore violative of Article 14, Sec. 1 of the Constitution of the United States in that it deprives a citizen of "the equal protection of the laws," and of the "privileges and immunities" and "property" of citizens.

Mr. Justice Chase, in 1798, said:

> "There are acts which the federal or state legislature cannot do, *without exceeding their authority.* * * * They may *command* what is right and *prohibit* what is wrong but they cannot change *innocence* into *guilt*, or punish *innocence* as a *crime.*" *Calder* v. *Bull*, 3 Dallas (U. S.) 386-388, 1 L. Ed. 649.

The right to attend the State Pubic Schools is recognized by the Constitution of the State of Mississippi, and is therefore a vested, legal right of which Mr. Waugh could not be deprived merely because he was a member of a fraternity.

> "The opportunity of instruction at public schools is afforded the youth of the state by the statute of the state, enacted in obedience to the special command of the constitution of the state. The advantage or benefit thereby vounchsafed to each child, of attending a public school, is, therefore, one derived and secured to it under the highest sanction of positive law. It is, therefore, a right—a legal right—as distinctly so as the vested right in property owned is a legal right, and as such it is protected, and is entitled to be protected by all the guarantees by which other legal rights are protected and secured to the possessor."
>
> *Ward* v. *Flood,* 48 Cal. 36, 17 Am. Rep. 405.

This case, as is shown in Vol. 15 of Notes to Am. Rep., has been cited in more than *seventeen* decisions by *other courts.*

This principle was recognized by the court in *McFarland* v. *Goins,* 96 Miss. 67, 50 So. Rep. 493, when it held that school rights and benefits must not be given to one class to the exclusion of another.

See, also, *Hobbs* v. *Germany,* 94 Miss. 469, 49 So. 515, 22 L. R. A., N. S. 983; *State ex rel* v. *St. Louis, etc.,* 134 Mo. 296, 35 S. W. 617, 56 Am. St. Rep. 503, 513, and *Claybrook* v. *Owensboro,* 16 Fed. Rep. 301.

While a state, by its constitution and laws, may ...se the doors and abolish public schools and other state ...titutions, yet the state can not establish and perpetu... by public taxes and public funds such public institu...ns and offices and close the doors of such institutions ... hundreds and thousands of her best citizens merely ...cause they are members of harmless organizations and ... sociations. So long as a citizen is morally and other...ise fit to use and enjoy the state institutions, he has a ...*sted right* to the *use and enjoyment* of the *offices and ...nefits* afforded by the state which are guaranteed ...nder both state and Federal Constitutions and which ...e can enforce in the courts.

> "An office is as much a species of property as anything which is capable of being held or owned, and to deprive one of it, or unjustly withhold it, is an injury which the law can redress in a manner as ample as it can any other wrong. * * *
>
> The right to exercise a public office is a species of property, equally with any other thing capable of possession, and the law affords adequate redress when the enjoyment of it is wrongfully prevented. 3 Kent, 454."
>
> *Wammack* v. *Holloway*, 2 Ala. 31, 33.
> *Memphis* v. *Woodward*, 12 Heisk, 499.

> "An office is an incorporeal right, and consists in the right to execute a public trust and to take the emoluments belonging to it, and an injury to this right is an injury to a private right for which there ought to be a remedy."
>
> *Maloney* v. *Collier*, 112 Tenn. 100, 83 S. W. 672.

Nelson v. *Sneed*, 112 Tenn. 48, 83 S. W. 788.
Hoke v. *Henderson*, 15 N. C. 1, 25 Am. Dec. 677.
State v. *Day*, 124 N. C. 362, 32 S. W. 784, 46 L. R. A. 295.
State v. *Bellamy*, 120 N. C. 212, 27 S. E. 113.
Wood v. *Bellamy*, 120 N. C. 212, 27 S. E. 115.
Clark v. *Stanley*, 66 N. C. 63, 8 Am. Rep. 488.

But there has been no abolition of schools and public institutions in Mississippi by this anti-fraternity act but, by it, the benefits—the vested property rights—are legislated away from the hundreds of her best citizens who are members of fraternities and these emoluments and property rights are given exclusively to others who are not such members.

> "It is too clear for argument that the real purpose and design was, not to abolish the office, but to get rid of one incumbent to make room for another. The method pursued to effect the removal is not such as commends itself to a court of justice. An officer whose tenure is during good behavior, or who can only be removed for cause, cannot be legislated out of office. *People* v. *McAllister*, 10 Utah, 357, 37 Pac. 578; *Pratt* v. *Board*, 15 Utah, 1, 49 Pac. 747; *Heath* v. *Salt Lake City*, 16 Utah, 374, 52 Pac. 602; *Pratt* v. *Swann*, 16 Utah, 483, 52 Pac. 1092."
>
> *Silvey* v. *Boyle*, 20 Utah, 205, 57 Pac. 880.

> "Though the legislature is given the power to abolish the office of commonwealth's attorney in this state, until it does so it cannot abolish the tenure of any rightful incumbent of the office. He might be impeached, but not legislated out of of-

fice. Cooley's Const. Lim. (6th Ed.) 482; Black, Const. Prohib., p. 119, Sec. 99."

Adams v. *Roberts*, 119 Ky. 364, 83 S. W. 1035.

See also *Malone* v. *Williams*, 118 Tenn. 390, 103 S. W. 798, 121 Am. St. Rep. 1002, and cases cited therein.

The *right to attend a public school* is such that if a student is *illegally expelled*, he is entitled to sue the teacher and school board for damages for depriving him of this right, as held by several courts.

Peck v. *Smith*, 41 Conn. 442.
Rulison v. *Post*, 79 Ill. 567.
McIntyre v. *Trustees*, 11 Ontario, 439.
Stuckey v. *Churchman*, 2 Ill. App. 584.
Morrison v. *Lawrence*, 186 Mass. 456, 72 N. E. 91.
Boyd v. *Blaisdell*, 15 Ind. 73.
Donohue v. *Richards*, 38 Me. 376, 61 Am. Dec. 256.
Stephenson v. *Hall*, 14 Barb. (N. Y.) 222.
Roe v. *Deming*, 21 Ohio St. 666.

But as Mr. Waugh was not refused admission by reason of any malice, wantonness or intention to wrong him by the trustees, but the Act of the Legislature held a heavy club over the trustees (the state's repository power), which forced them to take this action, he probably could not maintain a suit for damages, nevertheless, this *right is a valuable one* which cannot be taken from him for some arbitrary, unreasonable and unlawful reason. It is ordained by the constitution of that state

and it has been expressly recognized by the courts in Mississippi (*McFarland* v. *Goins*, 96 Miss. 67, 50 So. 493 and *Hobbs* v. *Germany*, 94 Miss. 469, 49 So. 515, 22 L. R. A. (N. S.) 983) that the *right to attend the public schools was a valuable property right which could and should be upheld and enforced by the courts.*

The act and pledge prohibit a man from peaceably and lawfully assembling with his fraternity brothers during vacation, and prohibits him from speaking of his fraternity and therefore suppresses freedom of speech.

The right to peaceably and lawfully assemble, to use the language of Chief Justice Marshall, "derives its source from the laws whose authority is acknowledged by civilized man throughout the world." *Gibbons* v. *Ogdon*, 9 Wheaton 1, 211, 6 L. Ed. 23.

And as it is found wherever civilization exists, the government of the United States when established found it in existence, with the obligation on the part of the states to afford it protection.

The right to peaceably assemble and freedom of speech are held sacred in Secs. 11 and 12 of Mississippi's Constitution.

And freedom of speech can not be prohibited nor can the freedom of the press.

Ex parte Foster, 44 Tex. Crim. R. 423, 60 L. R. A. 631, 100 Am. St. Rep 866.
Re Shortridge, 99 Calif. 526, 21 L. R. A. 755.
Dailey v. *Superior Court*, 112 Calif. 94.

And he is prohibited from freedom of speech in his ...ne and from meeting or affiliating with his fraternity, ...*ether in the state or out of it during vacation* and is ...refore deprived of his right of "liberty and the pur...t of happiness" mentioned in the Declaration of Inde...ndence of July 4th, 1776, and is deprived of the "priv...ges and immunities of free citizens" as nominated in ...e 4th Article of Confederation of July 9th, 1778, and ...prived of those sacred rights guaranteed by the 14th ...mendment of July 28th, 1868.

Allgeyer v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832.

The act and pledge deprive a citizen and tax-...ayer of natural, inherent and inalienable rights ...ithout due process of law.

The *second section* of the act provides that no man who may be a member of a fraternity shall "in any wise contribute any dues or donations" to a fraternity. The pledge provides that he shall not "aid, abet or encourage the organization or perpetuation" of any of said fraternities while attending the university or during vacation, whether in or out of the state.

This deprives a man of his property and property rights, for when he is deprived of using his property in any lawful manner, he is deprived of his natural, inherent and inalienable rights guaranteed under the Constitution of the United States.

"The right of acquiring and possessing property, and having it protected, is one of the natural, inherent and inalienable rights of man."

Vanhorne v. *Dorrance*, 2 Dall. 304, 310, 1 L. Ed. 391.

"Property is placed by the Constitution in the same category with 'liberty and life.' "

Wynehamer v. *People*, 13 N. Y. 378.

"Depriving an owner of property of one of its essential attributes is depriving him of his property within the constitutional provision."

People v. *Otis*, 90 N. Y. 48.

"The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor, which is as we have seen, property, is protected by the Constitution."

State v. *Goodwill*, 33 W. Va. 179, 10 S. E. 285, 25 Am. St. Rep. 863, 6 L. R. A. 621.

Then paying dues to a fraternity in a state where it is not prohibited to exist and not in any manner thought inimical to the welfare of a state and its citizens, or *paying them out of the state can not be prohibited.*

"It does not lie in the power of the legislature to make the act a crime which consists in the bare exercise of a simple constitutional right."

Re Helen Fluke (1900 Mo.), 51 L. R. A. 176.
State v. *Julow*, 129 Mo. 160, 29 L. R. A. 257, 31 S. W. 781.
Allgeyer v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832, 835, 836.

In *Allgeyer v. Louisiana*, *supra*, a violation of a statute of Louisiana of 1894, No. 66, was involved, and the Supreme Court of Louisiana having affirmed the conviction of Allgeyer for having written letters in Louisiana and contracted with the insurance company in New York for marine insurance on 100 bales of cotton in the State of Louisiana (*see* same case reported in 48 La. Ann. 104), the Supreme Court of the United States reversed that judgment and held the act in violation of the 14th amendment of the Constitution and said:

> "The Supreme Court of Louisiana says that the act of writing, within that state, the letter of notification, was an act therein done to effect an insurance on property then in the state, in a marine insurance company which had not complied with its laws, and such act was therefore prohibited by the statute. As so construed we think the statute is a violation of the 14th Amendment of the Federal Constitution, in that it deprives the defendants of their liberty without due process of law. The statute which forbids such acts does not become due process of law, because it is inconsistent with the provisions of the Constitution of the Union. The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

It was said by Mr. Justice Bradley in *Butchers' Union S. H. L. S. L. Co. v. Crescent City L. S. L. & S. H. Co.*, 111 U. S. 746, 762 (28 L. Ed. 585, 591), in the course of his concurring opinion in that case, that:

> "the right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain inalienable rights, and among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen." Again, on page 763, the learned justice said: "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." And again, on page 765: "But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does deprive him, to a certain extent, of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers, which he has already assumed, to a material part of the liberty of the citizen."

It is true that these remarks were made in regard to questions of monopoly, but they will describe the rights which are covered by the word "liberty" as contained in the 14 Amendment. Again, in *Powell v. Pennsylvania*, 127 U. S. 678, 684 (32 L. Ed. 253, 255), Mr. Justice Harlan, in stating the opinion of the court, said:

> "The main proposition advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the 14th Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law."

See, also, *Head* v. *New York L. Ins. Co.*, 231 U. S. ', 58 L. Ed. 879, 882.

We cited the above case and urged that the princi- s so eloquently and well stated by a unanimous court, highest arbiters of human rights in our country be llowed in the present case, but manifestly the court, aking through Special Justice Mayes, erred in follow- the like reasoning and conclusions reached by the preme Court of Louisiana or like courts, for as stated the opinion (*Waugh* v. *Board*, 104 Miss. ..... 62 So. ep. 827-831):

> "Many decisions are cited by appellee, but we refuse to follow any decision that would hold this act unconstitutional."

Taxing Waugh's property, and depriving him of the benefits of the state institutions simply because he is a member of a fraternity—a harmless organization—is violative of 14th Amendment, invidiously discriminates against him.

Sec. 112 of Constitution of Mississippi provides that "Taxation shall be uniform and equal throughout

the State." Sec. 90 of said Constitution provides that no "local, private or special" laws shall be enacted providing for the "management or support of any private or common school." While Sec. 207 of Art. 8 of said Constitution provides separate public schools "for children of the white and colored races." Sec. 208 provides that no appropriation of the state funds shall be made to any school except "a free school."

In the case before this court we find that it is charged in appellant's bill and admitted by demurrer that *Mr. Waugh is a taxpayer and his money is therefore appropriated to support and maintain the University and public schools*, the doors of which are shut to him because he is a member of a fraternity—a harmless association, and which is not excluded from the State of Mississippi but permitted to exist in every town and county in the state.

In 1908 the legislature of the State of Mississippi by Ch. 102, p. 92, passed an act which provided for the establishing of agricultural high schools in counties *for the white children* and no provision was made *for children of the other race*, and a negro whose property was being taxed to support such school filed a bill questioning the validity of said law under the Constitution of the United States, the court in that case, *McFarland* v. *Goins* (1909), 96 Miss. 67, 50 So. Rep. 493, speaking through Justice Mayes, held the act unconstitutional, and said:

> "If the 14th Amendment of the Constitution of the United States means anything at all, it cer-

tainly means that all citizens shall stand equal before the law, and that no special privilege or benefit shall be given to one class of citizens to the exclusion of the other, as a matter of statutory enactment."

And on page 76 says:

"No decision of any Federal or State tribunal has yet been called to our attention, nor do we think it will be so long as the Fourteenth Amendment is in existence, upholding a statute taxing the property of the two races for the benefit of the one."

In the case of *Henderson Bridge Co.* v. *Henderson*, 173 U. S. 624, 43 L. Ed. 823, 831, it was said:

"It is conceivable that taxation may be of such a nature and so burdensome as properly to be characterized a taking of private property for public use without just compensation."

And in the case of *Chicago, B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226, 41 L. Ed. 979, 985, reviewing with learning and showing great research of authorities, the court quoted and followed *Citizens Sav. & L. Asso.* v. *Topeka*, 87 U. S. 20, 22 L. Ed. 455, 461, and held "that the property of the citizen could not be taken, under the power of taxation, to promote private objects, and, therefore, that a statute authorizing a town to issue its bonds in aid of a manufacturing enterprise of individuals was void because the object was a private not a public one. See also *Cole* v. *LaGrange*, 113 U. S. 1, 28 L. Ed. 896."

And in that case is also quoted and followed the case of *Scott* v. *Toledo,* 36 Fed. Rep. 385, 395, 1 L. R. A. 688, in which it was held that

> "since the adoption of the 14th Amendment compensation for private property taken for public uses constitutes an essential element in 'due process of law,' and without such compensation the appropriation of private property to *public uses, no matter under what form of procedure it is taken,* would violate the provisions of the Federal Constitution."

In *Claybrook* v. *Owensboro,* 16 Fed. Rep. 301, 23 Fed. Rep. 634, it was held that a law authorizing taxation of property owned by white persons to educate the white children, and that of the colored to educate the negro children was unconstitutional and void.

See also

Davenport v. *Cloverport,* 72 Fed. Rep. 689.
U. S. v. *Buntin,* 10 Fed. Rep. 730.
San Mateo Co. v. *So. Pac. Ry. Co.,* 13 Fed. 722.
Ward v. *Flood,* 48 Cal. 51.
Virginia v. *River,* 100 U. S. 313.

And in *Wong Him* v. *Callahan,* 119 Fed. Rep. 381, it was held that American born Chinese were entitled to *equal school rights.*

In fact, practically all State Constitutions provide for separate schools for the races, but *provide equal advantages.*

But in Mississippi neither the appellant nor the hundreds of members of fraternities in that state are ad-

:d to the University or *other state schools*, all schools :losed to them, though their properties are taxed to ort these schools—their properties are taken for pub- :ses, and all the benefits are taken from men who are :bers of fraternities and given to others who are not ı members.

If the state schools which are created by the Con- :ution and the general laws of that state and support-)y the public moneys of the state, can close their doors citizens and taxpayers merely because such applicant a member of a harmless association, then the state :ough its legislature can prohibit and prevent men who e members of any harmless association from ever hold- ; any office in the state, and using and enjoying the in- tutions of the State.

> "No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government," said the court in *Gulf & R. Co.* v. *Ellis*, 165 U. S. 150, 41 L. Ed. 66, and see also, *Connolly* v. *Union S. & P. Co.*, 184 U. S. 540, 46 L. Ed. 679.

If a state through its legislature can shut the doors of its state institutions in the face of citizens who are members of harmless associations such as fraternities of all kinds and descriptions, or because a man is a member of the Epworth League, Y. M. C. A., Masons, Knights of Pythias, Knights of Honor, Elks, or similar organization or association, then it can take from or deny to such citizen the right to vote in any and all its elections.

In *Louthan* v. *Commonwealth*, 79 Va. 196, it was held that the legislature cannot "prohibit the active participation in politics of certain officers of a state government."

See also, 2 Story Const. L. par. 1881.

> "The right to vote in the states comes from the states, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been. *United States* v. *Cruikshank*, 92 U. S. 542, 23 L. Ed. 588; *United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563."
>
> *McPherson* v. *Blacker*, 146 U. S. 1 36, L. Ed. 869, 878.

If a state can shut the doors of its schools and other state institutions to a citizen simply because he is a member of a fraternity, then such a citizen, though competent and qualified in every other particular, can be prohibited from serving as a juror in all the courts of the state for all times to come.

> "Thus, in *Strauder* v. *West Virginia*, 100 U. S. 303, 25 L. Ed. 664, it was held that a law of West Virginia limiting to white male persons, twenty-one years of age and citizens of the state, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step towards reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty and property, there shall be no exclusion of his race and no discrimination against

them because of color has been asserted in a number of cases. *Ex parte Virginia* (*Virginia* v. *Rivers*), 100 U. S. 313, 25 L. Ed. 697; *Neal* v. *Delaware*, 103 U. S. 370, 26 L. Ed. 567; *Bush* v. *Kentucky*, 107 U. S. 110, 27 L. Ed. 354; *Gibson* v. *Mississippi*, 162 U. S. 565, 40 L. Ed. 1075."

Plessy v. *Ferguson*, 163 U. S. 537, 41 L. Ed. 256, 259.

Then if a man cannot be disqualified and disfranchised from sitting as a juror, nor from voting, nor from holding office, by reason of being a colored man, though competent and fit in every other respect, for the same reason no citizen who is competent and fit in every particular to enter the schools of the state, should be disqualified and disfranchised simply because he is a member of a harmless organization or association.

Men may disqualify themselves from the rights of the state institutions and offices by immoralities and convictions of crimes, but it has never been in the power nor right of a legislature, without giving a good citizen his day in court, to disqualify him simply because he is a member of a harmless association which may exist in every county and city in the state of Mississippi, and which does exist in every leading state in the Union. If a state through its legislature can disqualify and disfranchise a citizen from voting, from holding office, from sitting as a juror, from the benefits of all state institutions, simply because he is a member of a fraternity, it can disqualify and disfranchise him, though he has not had his day in court, from teaching in the state schools and from practicing law before the state courts.

As early as 1843, that great jurist, Chief Justice Wm. L. Sharkey, speaking for the court in *Ex parte Hefrom*, 7 How. Rep. 127, held that a lawyer could not be condemned or divested of his right to practice law without a trial in a court of justice for moral or profession delinquency.

Appellant was a member of a fraternity long before the Anti-Fraternity Act and test oath were passed by the Legislature of Mississippi and trustees.

In the noted case of *Ex parte A. H. Garland* (1866), 4 Wall. 333, 71 U. S. 399, 18 L. Ed. 370, involving an Act of Congress passed Jan. 24th, 1865, which excluded all persons who had taken a part in the Civil War against the Union from practicing in the Federal Courts, the court held the Act unconstitutional, and Justice Field said:

> "The attorney and counselor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor.
>
> The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure the the court, or at the command of the legislature.
>
> It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency."

And in the case of *Cummings* v. *Missouri*, 4 Wall. 277, 71 U. S. 332, 18 L. Ed. 356, involving the constitutionality of parts of the Constitution of Missouri

prohibited teachers and priests from filling these unless they took an oath that they had been loyal Union, and the court held that "disqualification office or from the pursuits of a lawful avocation, punishment" prohibited, and said:

> "The theory upon which our political institutions rest is, that all men have certain inalienable right—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of these rights all are equal before the law.
>
> Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined."

If a state through acts of its legislative department y shut its doors and offices to citizens merely because y are members of a certain organization or associan, we think for the same reason it may close its courts men who are members of such associations, and may act laws by which persons who are members of frarnities who are not citizens and are sued in the state urts, cannot remove the cause to the Federal Courts for rial.

Such acts would unquestionably be unconstitutional.

St. Louis & San Francisco R. Co. v. *Harrison*, 232 U. S. —, 58 L. Ed. 333.

Ins. Co. v. *Morse*, 20 Wall. 445, 451, 22 L. Ed. 365.

Doyle v. *Continental Ins. Co.*, 94, U. S. 535, 536, 24 L. Ed. 148.

Not only does the Act of the Legislature invidiously discriminate against men who are members of fraternities, but the power is delegated and reposited in the trustees to so discriminate, and said repository of state power did invidiously discriminate against Mr. Waugh, the appellant.

Under the 3rd section of the Act it is provided that: "This Act shall be enforced by the trustees and faculties by such rules and punishments as they may prescribe."

Thus it is seen that the trustees and faculties are given absolute and complete power to pass and enforce any arbitrary and discriminatory rules or laws as may please them and prescribe and enforce such unreasonable, arbitrary and discriminatory punishments as to them may seem proper and best. They are therefore made legislators, judges, juries and executioners regardless of general laws and rules, and a heavy penalty is held over them to see that the law is enforced by section 4 which provides for their removal if they permit violations of the Act.

By this Act and delegated power, the trustees and faculties are empowered to legislate, try, convict and order a man disfranchised, disqualified and quartered, and *no appeal is provided*, a despot only known to the dark ages of savagery. Such a law with such delegated powers is vicious and unconstitutional.

Ex parte Young, 209 U. S. 123, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 28 Sup. Ct. Rep. 441, 14 Am. Coyer. 764.

On the 27th of March, 1912, the Board of Trustees met and passed an order which permitted C. S. Leavell, M. S. Connor and *six* other students who were students *in* the University and who were members of fraternities to receive the *full benefits* of the state institution *in every particular*, but when Mr. Waugh who *was not a student in* the University, but who *only a few weeks thereafter* knocked at the door, was refused admission. This was arbitrary and invidious discrimination which no court should permit, and to which no fair, honest and law abiding repository of state power should have been a party.

> "A state acts by its legislative, its executive and its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so or the constitutional prohibition has no meaning. Then the state has clothed one of its agents with power to annul or to evade it." *Ex parte Virginia*, 100 U. S. 339, 25 L. Ed. 676, 3 Am. Crim. Rep. 547.

> "Where one in possession of state power uses that power to the doing of wrongs, which are forbidden by the U. S. Const. 14th Amend., is within the purview of that Amendment, even though the

consummation of the wrong may not be within the power possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer." *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278, 57 L. Ed. 510.

Laws giving absolute and arbitrary discretion to officials are void, and any person who is unlawfully oppressed will secure redress under the 14th Amendment of the United States Constitution.

Yick Wo v. *Hopkins*, 118 U. S. 356, 30 L. Ed. 220.

Soon Hing v. *Crowley*, 113 U. S. 703, 28 L. Ed. 1145.

Crowley v. *Christensen*, 137 L. S. 86, 34 L. Ed. 620.

Chy Ling v. *Freeman*, 92 U. S. 275, 23 L. Ed. 550.

Henderson v. *N. Y. City*, 92 U. S. 259, 23 L. Ed. 543.

State ex rel. v. *Newton*, 3 Higgins (Tenn.), 93.

N. Y. S. v. *Van De Carr*, 199 U. S. 552, 50 L. Ed. 305.

Dobbins v. *Los Angeles*, 195 U. S. 223, 236, 49 L. Ed. 169.

Quintini v. *Board, etc.*, 64 Miss. 483, 490, 1 So. Rep. 625.

And it has always been a judicial and not a legislative question.

"It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body, or the public as a whole) operates

to divest another of any rights of person or property."

Regan v. Farmers' Loan & Trust Co., 156 U. S. 362, 399, 39 L. Ed. 1018, 1028.

"Regulations adopted by persons in charge of a school are analogous to by-laws enacted by municipal and other corporations, and both will be annulled by the courts when found to be unauthorized, against common right or palpably unreasonable. Ang. & Ames Corp. p. 257; Dill. Mun. Corp. (3rd Ed.), p. 469; *Fuqua v. Medical Society, etc.*, 28 Barb. 570; *Fuqua v. Medical Society, etc.*, 32 N. Y. 187; *Fuqua v. Mechanics' Aid Society*, 22 Wisk. 86; *Fuller v. Plainfield, etc. School*, 6 Conn. 532."

State v. White, 82 Ind. 278, 42 Am. Rep. 496, 503.

Fortich v. Michaux, 111 Ind. 472, 11 N. E. 605, 60 Am. Rep. 709, 715.

Police power of a state confers no license to violate the Constitution nor destroy constitutional rights.

While a state has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety, but if by their necessary operation, its regulations looking to either of those ends amount to a denial to a person within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void—violative of the 14th Amendment of the Constitution.

Gibbons v. Ogden, 9 Wheaton, L. 210, 6 L. Ed. 23.

Stewart v. Davenport, 22 Wall. 227, 240, 22 L. Ed. 283.

Lawton v. Steele, 152 U. S. 133, 137, 38 L. Ed. 385, 14 Sup. Ct. Rep. 499.

Maynard, ex. p. Ex v. Hunter, 149 U. S. 422, 424, 37 L. Ed. 797, 13 Sup. Ct. Rep. 1016.

Bradley v. Fisher, 13 Wall. U. S. 335, 351, 20 L. Ed. 646.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 558, 46 L. Ed. 679, 22 Sup. Ct. Rep. 431.

Dobbins v. Los Angeles, 195 U. S. 223, 236, 237, 49 L. Ed. 169, 25 Sup. Ct. Rep. 18.

"It is the solemn duty of the courts to see that no one is deprived of his constitutional rights by the arbitrary exercise of the taxing power."

Allen v. Pullman, 191 U. S. 171, 180, 48 L. Ed. 133, 24 Sup. Ct. Rep. 795.

Courts may test the constitutionality of a statute from the natural and legal effect of the language employed, and the effect of such statute when put into operation.

"The purpose of a statute must be determined from the natural and legal effect of the language employed, and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statute when put into operation, and not from facts aliunde the statute itself."

Champion v. Ames, 188 U. S. 321, 354, 47 L. Ed. 492, 23 Sup. Ct. Rep. 321, 3 Ann. Cas. 577, 13 Am. Crim. Rep. 561; *Brimson v. Arthurs*, 188 U. S. 70, 84 L. Ed. 602, 23 Sup. Ct. Rep. 321, 3 Ann. Cas. 577, 13 Am. Crim. Rep. 561; *Lottery Case*, 188 U. S. 321, 354, 47 L. Ed. 492, 23 Sup. Ct. Rep. 321, 13 Am. Crim. Rep. 561. The court looks beyond the mere letter of the law in such cases. *Ex parte Quirin*, 317 U. S. 1, 25, 87 L. Ed. 3, 63 Sup. Ct. Rep. 1.

Lovejoy v. Murray, 70 U. S. 1, 3, 18 L. Ed. 129, 3 Wall. 1, 3;

Hepburn v. Griswold, 75 U. S. 603, 8 Wall. 603, 19 L. Ed. 513;

Ex parte Bollman, 8 Cranch 75, 3 L. Ed. 554.

Classification by legislative department must be reasonable, and must not be arbitrary, oppressive or capricious, and can not depend upon considerations having no possible connection with the duties of citizens.

"Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

Gulf etc. R. Co. v. *Ellis*, 165 U. S. 150, 155, 41 L. Ed. 66.

"Of course, if such discrimination were purely arbitrary, oppressive, or capricious, and made to depend upon differences of color, nativity, religious opinions, political affiliations or *other considerations having no possible connection with the duties of citizens* as taxpayers, such exemption would be pure favoritism, and a denial of the equal protection of the laws to the less favored classes."

American Sugar Ref. Co. v. *Louisiana*, 179 U. S. 89, 92 45 L. Ed. 102.

"Social rights and privileges must take care of themselves. The law cannot prescribe with whom one shall shake hands or associate as a friend."

L. D. Willicott & Sons Co. v. *Driscoll*, 200 Mass. 110, 119.

"The legislature may legislate in regard to a class of persons, but they cannot take what may be

termed a natural class of persons, split that class in two, and then arbitrarily designate the dis-severed fractions of the original unit as two classes, and enact different laws for the government of each. This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do. *State* v. *Herrmann*, 75 Mo. loc. cit. 353."

State v. *Julow*, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, *259*.

"If mere membership in any of the so-called Greek fraternities may be treated as a disqualification for admission as a student in a public school, then membership in any secret or similar society may be converted into a like disqualification, and in this way discriminations might be made against large classes of the inhabitants of the state, in utter disregard of the fundamental ideas upon which our entire education system is based."

State ex rel. Stallard v. *White et als.*, 82 Ind. 278, 42 Am. Rep. 496, *503*.

Mr. Justice Harlan delivering the opinion of the court that held that a state could not invidiously discriminate, said:

"In prescribing regulations for the conduct of trade, it can not divide those engaged in trade into classes and make criminals of one class if they do a certain forbidden thing, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity."

Connolly v. *Union S. P. Co.*, 184 U. S. 540, 561, 46 L. Ed. 676.

"The fourteenth amendment was ordained to secure equal rights to all persons."

Ex parte Virginia, 100 U. S. 339, 25 L. Ed. 676.

"The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."

Pembina, etc. Min. & Mill Co. v. *Pennsylvania*, 125 U. S. 181, 188, 31 L. Ed. 650.
McPherson v. *Blacker*, 146 U. S. 1, 39, 36 L. Ed. 869.

Neither the Legislature nor the repository of state power can arbitrarily assume the position of pater familas, supervisor or king with unlimited power over students and invade the homes and wrest from parents the parental rights and control and deprive appellant of his liberty and pursuit of happiness.

Both the Act of the Legislature, Sec. 2, and the *oath* in form of pledge required by trustees, the student of state schools is forbidden to pay his dues *in his home* or *out of the state* to his fraternity, or if he "aid, abet or encourage such orders" *in his home*, or by "word or deed" *during vacation*, whether that vacation be spent *in* or *out of the state*, whether it be spent in *this* or *foreign countries*, and he speak in favor of or in any way *"aid, abet or encourage the organization or perpetuation"* of such fraternities *anywhere*, the doors of the

state institutions are closed to him, though he be a person of highest moral and social standing and fit in every particular to enjoy the rights and offices of the state for which he is taxed to support.

Such a discrimination implies legal inferiority and is a condition of reducing fraternity men to a condition of servility, which is prohibited by the 14th Amendment.

Strauder v. *West Va.*, 100 U. S. 203, 25 L. Ed. 664.

"When the school room is entered by the pupil, the authority of the parent ceases, and that of the teacher begins. When sent to his home, the authority of the teacher ends, and that of the parent is resumed. For his conduct when at school he may be punished, or even expelled, under proper circumstances. For his conduct when at home, he is subject to domestic control."

Dritt v. *Snodgrass*, 66 Mo. 286, 25 Am. Rep. 343, 487.

"Certainly a rule of the school, which invades the home and wrests from the parent his right to control his child around his own hearthstone, is inconsistent with any law that has yet governed the parent in this state, and the writer of this opinion dares hope that it will be inconsistent with any law that will ever operate here so long as liberty lasts and children are taught to revere and look up to their parents. In the home the parental authority is and should be supreme, and it is a misguided zeal that attempts to wrest it from them."

Hobbs v. *Germany*, 94 Miss. 469, 476, 49 So. 515, 22 L. R. A. (N. S.) 983.

"Any rule or regulation which has for its object anything outside of the instruction of the pupil

—the order requisite to instruction—is beyond the province of the board of education to adopt."

State v. *Board*, 63 Wis. 234, 23 N. W. 102, 53 Am. Rep. 284.

And in the case of *Lochner* v. *New York*, 198 U. S. 45, 49 L. Ed. 937, 944, Mr. Justice Peckham, discussing at length the lack of *right* and *power* of the legislature to regulate and prohibit the *harmless acts of individuals*, said:

> "The state in that case would assume the position of a supervisor, or *pater familas*, over every act of the individual, and its right of governmental interference with his hours of exercise, the character thereof, and the extent to which it shall be carried would be recognized and upheld."

The people of the State of Mississippi have not by their Constitution nor laws thought nor expressed that membership in a fraternal organization was in any particular inimical to the welfare of the state—they are permitted to exist in every town and county in the state, and this anti-fraternity law cannot be said to *have even a remote relation* to protect the public health, public safety, public morals, nor public welfare.

> "It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police powers for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legis-

lates, it is apparent that the public health or welfare bears but the remote relation to the law."

Lochner v. *N. Y.*, 198 U. S. 45, 49 L. Ed. 937, *944*.

Mr. Justice Bradley delivering the opinion of the court in *Boyd* v. *U. S.*, 116 U. S. 641, 20 L. Ed. 746, *752*, holding that an act of Congress was unconstitutional, said:

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*. We have no doubt that the legislative body is actuated by the same motives; but the vast accummulation of business brought before it sometimes prevents it, on first presentation, from noticing objections which become developed by time and practical application of the objectional law."

Mabury v. *Madison*, 1 Cranch's Rep. 137, 2 L. Ed. 60.

Fletcher v. *Peck*, 6 Cranch, 137, opinions by Mr. Ch. J. Marshall.

See also:

Board v. *Rollins*, 130 U. S. 662, 9 Sup. Ct. 651, 32 L. Ed. 1060, opinion by Mr. Justice L. Q. C. Lamar.

In the partisan, hurry, excitement, accumulation of business and vast flood of acts sought to be made laws of a state, the legislators coming from all stations and classes, and having little real understanding of constitutional law and the far reaching effect an act will have if put into law and execution, naturally a most serious

and sacred duty it is of the courts to watch and raise higher by construction the dykes, if need be, to protect the sacred Constitutional rights and *"privileges and immunities of free citizens,"* the rights of *"life, liberty and the pursuit of happiness,"* and *"the equal protection of the laws"* to all citizens.

And as well said by Mr. Hamilton in the seventy-eighth number of the Federalist in which he agreed with the maxim of Montesquieu, that:

> "There is no liberty if the power of judging be not separated from the legislative and executive powers."

And it was anticipated by those great statesmen, Madison, Hamilton and Jay, in their appeal to the American people to adopt the Constitution, that the absolute independence of the courts and judges was essential, and in the seventy-eighth Federalist it was said:

> "This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill-humors which the arts of designing men or the influence of particular conjunctures sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the Government and serious oppression of minor party in the community."

Manifestly no "legislative judgment" which invades or destroys those sacred rights of any American citizen

is "due process of law" or the "law of the land." As well said by Mr. Webster in the Dartmouth College Case:

> "By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after a trial."

Authorities relied upon by appellees are not analogous to, nor are they precedents for the questions herein involved.

In the instant case we have by defendants' demurring to the bill filed by Mr. Waugh, a *confession* that all is true as alleged—that the Greek letter fraternity of which he is a member *teaches and has for its paramount purpose only good,* and upon their demurrer being overruled, failing and refusing to plead further, *established beyond a doubt* as a matter of *fact* and of *law* that to be a member of such a fraternity is not in any way detrimental to the University nor does it in any way affect other students. Masonry teaches nothing except that which is good. If some member of that or any other fraternal organization should commit a misdemeanor or crime in this state or any other state, would that of itself taint or convict the fraternity? If one man who is a Methodist do wrong, would his act condemn all the rest of that great church? If some student at the University breach the discipline of the institution or commit some offense against good morals, would his act convict, taint and condemn and forever brand all the rest of the students as criminals and the University as a harbor of crime? No court has or ever will so hold.

The cases cited by appellants involve *solely high school fraternities* and here we add that no court has ever held that any of the National Greek letter fraternities which have chapters at Universities *teach other than good*—their rituals, their minutes, their publications, their documents speak for themselves and prove like Masonic documents of the good teachings and purposes of such orders. Each person, each association, each corporation must stand or fall by his or its records.

In the case of *Wilson* v. *Board, etc.*, 233 Ill. 464, 15 L. R. A. (N. S.) 1136, 1138, it was said by Justice Farmer, who wrote the opinion, that:

> "It is not claimed nor averred in the bill that plaintiff in error was deprived by the rule in question, from attendance at the school, nor from taking his place at the classes to which he belonged and pursuing his studies, and receiving instruction, the same as all other pupils in the school, in the course of studies taught therein."

And on page 1139 it was said:

> "They were not denied membership in associations of pupils of the schools for literary, social, musical, or athletic exercises, and were not prohibited from receiving the same benefits from those organizations that pupils not members of secret societies received."

Students who are members of fraternities in Mississippi are not only denied diplomas—and no student would labor for 4 years without hope of a diploma, and other rights connected with and made a part of the rights

and benefits of the school, but are absolutely denied admission to the University, deprived totally of all rights of the state institutions for which they are taxed to support.

In the case of *Wayland* v. *Board, etc.*, (Wash.), 86 Pac. 642, 7 L. R. A. (N. S.) 352, an answer was filed by defendants averring that this high school fraternity was detrimental to the welfare of the school, proof heard and the trial judge *found as a fact* this to be true as alleged in the answer, but it was held by the court:

> "It will be observed that no attempt is being made by the respondents to deny appellant any instruction offered by class work, or by the required curriculum of the school."

And on page 355 it was held that the privileges denied Wayland "were no part of the class work or curriculum."

No answer was filed in the instant case, no proof taken and no such finding of fact by the trial court—no such conviction, yet in that case the student was not deprived of the rights of the school—was not deprived of attending the school and receiving equal instruction with others and a diploma, but in the instant case Mr. Waugh is deprived like hundreds of other citizens who are fraternity men of the rights of the school for which he is and they are taxed to support.

In the case of *Kinzer* v. *Toms*, 105 N. W. 686, 3 L. R. A. (N. S.) 496, the court construing the laws of Iowa held that a student, who, with other persons ad-

vertised and played a game of foot-ball in which an admission of 25 cents for each person was charged and the *team was advertised as being that of Marion High School*, had violated such reasonable rules as would warrant his expulsion, but it was said:

> "They have no concern, it is true, with the individual conduct of the pupils wholly outside of the schoolroom and school grounds and while they are presumed to be under the control of their parents, or after they are beyond the age of parental control, to be governed by the rules which regulate the conduct of all members of the body politic; but the conduct of pupils which directly relates to and affects the management of the school and its efficiency is within the proper regulation of the school authorities."
>
> "In short, we hold that the defendants as a board had authority to prohibit, and did prohibit, the pupils of the high school from playing football in a game purporting to be played under the auspices of the school or a team purporting to be a team representing the school."

It was *principally for this fraud—this misrepresentation*—that the game was being played *under the auspices and for the benefit of the school and was representing the school*, when it was not, that was held to be detrimental to the school and warranted expulsion.

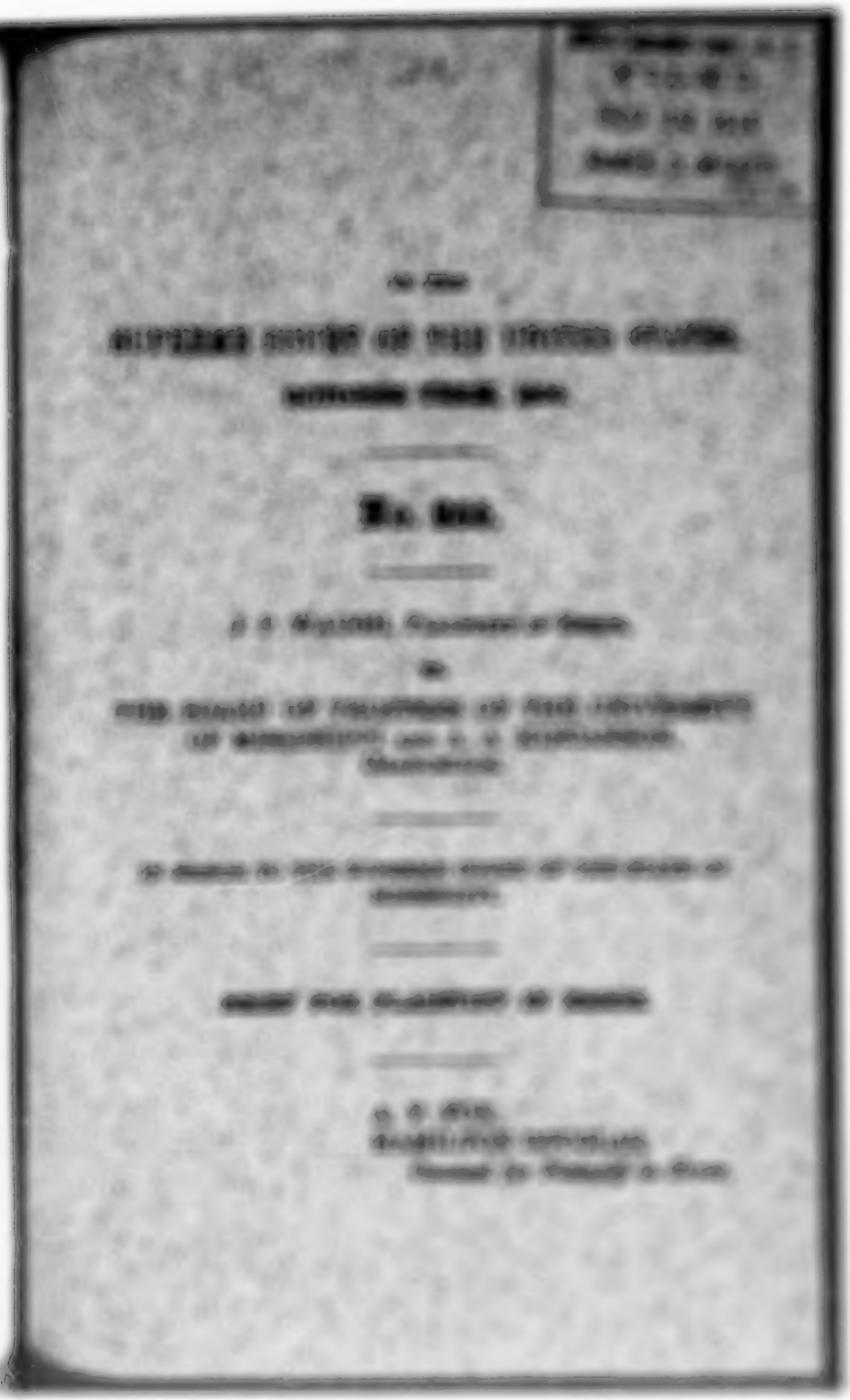
Conclusion.

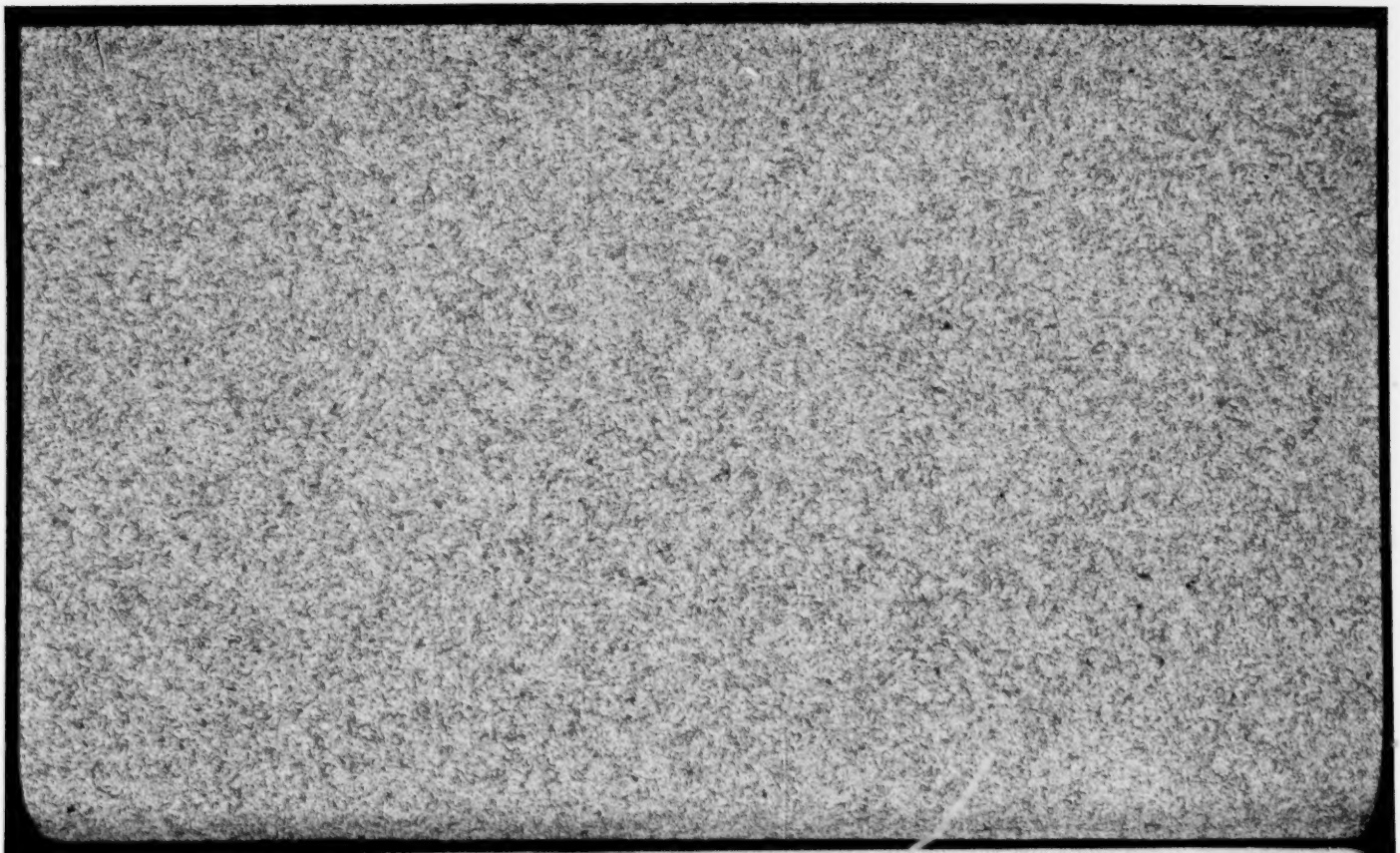
As a native Mississippian and an alumnus of the University, I feel the truest and deepest interest in the rights of the citizens of that state and the welfare of that great university.

The distinguished jurists, Mr. L. Q. C. Lamar, late Justice of the U. S. Supreme Court, and Mr. Charles Bowen Howry, Justice of the U. S. Court of Claims, and thousands of great men in many states and foreign countries were members of the Greek letter societies at the University of Mississippi. That great jurist of Mississippi, Mr. Albert Hall Whitfield, former Chief Justice of the Supreme Court, said that: "The Legislature of 1912 will ever be known as a comedy of errors," and we earnestly insist that this vicious anti-fraternity Act, and *test oath* pledge invades, loots and carries off the properties and rights of citizens, and that this pirate can not steer its way between the Scylla and Charybdis of right and justice.

And to this Honorable Court, the highest tribunal of justice in our great and free country, and with the fullest measure of confidence in the end which will be attained, and the landmark of American liberty which will be given to posterity as a precedent, we most respectfully submit this brief and the rights of our client.

William G. Calvit,
Solicitor for Appellant.





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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 255.

J. P. WAUGH, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI AND A. A. KINCANNON, CHANCELLOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

The only Federal question, and, therefore, the only one reviewable by this honorable court, is whether plaintiff in error, as a citizen and taxpayer of the State of Mississippi, was deprived of his liberty and the harmless pursuit of

happiness, and especially whether he was deprived of the equal protection of law, by the refusal of the defendant Board of Trustees to admit him as a student in the University of Mississippi.

The original bill filed in the Chancery Court of Lafayette County by plaintiff in error alleges that he is a citizen of the State of Mississippi and of the United States, residing at Goodman, Mississippi; that on the — day of November, 1912, he applied for admission as a student in the Law Department of the University of Mississippi; that thereupon the chancellor presented to him the following pledge and required him to sign it as a prerequisite to his admission:

> "I hereby state and affirm upon my honor that I am not now pledged to become a member of any of the Greek letter fraternities, societies or sororities named in Senate Bill 227 of the Laws of Mississippi, 1912, pages 192 and 193, chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within the sixty days preceding the opening of the session of 1912-1913. I further pledge and promise not to join any such organization while I am a student of the University and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies so long as I am a student of the University.
>
> "I further promise and pledge that I will not apply for nor accept any scholarship or medal or in any way be the beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein if I fail to keep or violate any of the provisions of the foregoing pledge.
>
> "I further pledge and promise to regard this obligation as binding between the session of 1912-1913 and 1913-1914, and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could even be remotely construed as being violative of the letter and the spirit of what is known as the 'Anti-fraternity Bill' passed by the Legislature of 1912, and approved by the Governor February 27, 1912."

Plaintiff in error refused to sign said pledge, and thereupon the chancellor, acting for the Board of Trustees, refused to admit him as a student.

The act of the Legislature of the State of Mississippi referred to in the said pledge is copied in full in the original bill.

It is only necessary to call the attention of this court to sections 1 and 2 of said bill, which are as follows:

> "SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the fraternities and sororities or Greek letter societies, known as 'Delta Kappa Epsilon,' 'Delta Psi,' 'Delta Tau Delta,' 'Sigma Chi,' 'Kappa Alpha,' 'Phi Kappa Psi,' 'Sigma Alpha Epsilon,' 'Phi Delta Theta,' 'Chi Omega,' 'Tau Delta Theta,' and all other secret orders, chapters, fraternities, sororities, societies, and organizations of whatever name, or without a name, of similar name and purpose, among students are hereby abolished and further prohibited to exist in the University of Mississippi and in all other educational institutions supported, in whole or in part, by the State.
>
> "Students Joining Same Barred from Class Honors, etc.
>
> "SECTION 2. That no student in the University, or in any other educational institution supported, in whole or in part, by the State, who is a member of any of the orders, chapters, fraternities, sororities, societies, and organizations hereby prohibited, shall be permitted to receive any class honors, diplomas or distinctions conferred by the institution of which he is a student, nor to compete nor contend for any prize or medal offered by his respective school, or by any association or individual. But any student who is a member of any of the orders, chapters, fraternities, sororities, societies or organizations aforesaid may, upon entrance to any of the aforesaid schools, file with the chancellor, president or superintendent, as the case may be, an agreement in writing that he will not during his attendance at said school, affiliate with same, nor attend their meetings nor in anywise con-

> tribute any dues or donations to them, and, thereafter, so long as such agreement is complied with in good faith, such student shall not be subjected to the restrictions created by this section."

The bill further alleges that plaintiff in error was a member of the Kappa Sigma Fraternity and affiliated with the chapter of that fraternity at Millsaps College, located at Jackson, Mississippi, and not supported, in whole or in part, by taxation levied by the State.

It is further alleged that the Board of Trustees, at a regular meeting held on March 27, 1912, adopted the following order:

> "The board desires it understood that the 'Anti-fraternity Law' passed by the Legislature but recently adjourned is not construed by it to apply to students already entered and who conduct themselves with that decorum always expected of Southern gentlemen."

It is further alleged that "plaintiff in error has never been a member of nor in any way affiliated with nor paid dues to any chapter of any of the so-called Greek letter fraternities organized among the student body of the said University or located at said University, and that, although he is affiliated with and paid dues to the chapter of the said Kappa Sigma fraternity at Millsaps College, if admitted as a student to the said University he has no intention or purpose of encouraging the organization or continuance or maintenance of any Greek letter fraternity in the State University or to affiliate with or to pay dues to or in any way support or encourage any such organizations in said University or to be connected with any sort of activities or work or meetings connected with any of said fraternities in said University," and that "the said Kappa Sigma fraternity has for its paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standard of good order and discipline in the student body of the

different colleges with which it is connected." (Let it be remembered that these allegations are admitted by the demurrer.)

It is further alleged that as a citizen of the United States and as a citizen and resident of the State of Mississippi who is in the jurisdiction of the State of Mississippi, plaintiff in error is, under the Fourteenth Amendment of the Constitution of the United States, entitled to the protection of liberty and the pursuit of happiness and entitled to the equal protection of the law, and that the said act of the Legislature and the said regulations and orders of the Board of Trustees of the University of Mississippi above set out without reason deprive plaintiff in error of his property rights and the harmless pursuit of happiness and deny to him the equal protection of the law of the State of Mississippi.

It is further alleged that section 2 of said act and the said regulations are unreasonable, in that they unnecessarily and unjustly assume extraterritorial jurisdiction in prohibiting a member of any fraternity or chapter not connected with the said University from receiving any class honors, diplomas, or distinctions conferred by the University and in prohibiting him from contending for any prize or medal offered by any individual; and in that they prohibit any student of the University from affiliating with or attending the meetings of or paying dues to any chapter of any fraternity, wherever situated, though entirely disconnected with the University.

It is further alleged that the said pledge required of plaintiff in error, prohibiting him from aiding, abetting, or encouraging or affiliating with any chapter of any Greek letter fraternity of any college, wherever situated, is unreasonable, unjust, and extraterritorial; and especially so is that part of the pledge requiring the applicant for admission to regard the application as binding between the sessions of 1912-1913 and 1913-1914.

The bill prays for a writ of injunction and that the said act of the Legislature be declared in conflict with the Con-

stitution of the United States and with the State of Mississippi, and that the said rules and regulations adopted by the said Board of Trustees be declared unreasonable, *ultra vires*, etc.

To the original bill a demurrer was interposed by the Board of Trustees. The grounds of the demurrer necessary to be noticed are, first, that there is no equity on the face of the bill; second, that the said act of the Legislature was in all respects constitutional; third, that the Legislature of the State of Mississippi is absolutely supreme; that they can adopt any measures for the regulation of the University, however unreasonable and unjust; that they are entirely unrestricted and unfettered by any provision of the Constitution of the State of Mississippi or of the United States, and that no court has any power whatever to pass on the reasonableness or unreasonableness of any statute of the State of Mississippi enacted for the government of the said University.

The chancery court overruled the said demurrer and declared the said act of the Legislature unconstitutional and the said orders of the said Board of Trustees *ultra vires*, unreasonable and void and made the injunction theretofore ordered perpetual. From this decree an appeal was taken to the Supreme Court of the State of Mississippi.

The Supreme Court of the State reversed the case, and, in doing so, placed itself in line with the most radical progressives in holding a legislative enactment to be the supreme law of the land. In the opinion of the court they say:

> *"Many decisions are cited by appellee, but we refuse to follow any decision that would hold this act unconstitutional."*

This broad declaration, of course, eliminated from the consideration by the Supreme Court of Mississippi any adverse decision, including a long line of decisions of this honorable court. The Mississippi court not only shut the doors of the University in the face of plaintiff in error, but added insult to injury by declaring that *"complainant is*

seeking to disobey the law," and again, to *"set at naught the laws of the State."*

The distinguished lawyer who acted as special judge might well be asked, in this connection, the initial question generally propounded to applicants for admission to practice law, that is, "What is law?" He should remember the elementary lesson that the constitutions of the State and of the United States are the supreme law of the land and that a legislative enactment which seeks arbitrarily to deprive any citizen of his constitutional rights is not only not law, but an act in violation of all law, and, therefore, void. It is certainly true in this case that the plaintiff in error is seeking not to violate the law, but to have the law vindicated.

Again the writer of this opinion declared that "the Fourteenth Amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wanted to take advantage of the gratuitous advantages offered to youths to obtain an education," etc.

Let me say that the plaintiff in error, in seeking admission to the University of Mississippi, is no mendicant seeking gratuitous favors or advantages. The original bill in this case declares that the plaintiff in error is a citizen and a taxpayer of the State of Mississippi, and as such the University of Mississippi belongs absolutely to him in common with the other taxpayers of the State. It was built and has been maintained by the taxpayers of the State and also by acts of Congress of the United States approved February 20, 1819, and June 20, 1894, donating certain lands to the University as is alleged in the original bill.

Assignment of Errors.

The assignment of errors found on page 30 of the record is all based on the contention of plaintiff in error that the court erred in not holding the said act of the Legislature of the State of Mississippi unconstitutional and void, for the

reason that it violates the Fourteenth Amendment to the Constitution of the United States, in denying to him the equal protection of law and the harmless pursuit of happiness, and that the various rules and regulations adopted by the Board of Trustees are *ultra vires* and void, because they are unreasonable, unnecessary, and deny the plaintiff in error the equal protection of law and the harmless pursuit of happiness.

BRIEF OF ARGUMENT.

To simplify the issues in this case, I may admit that it is well within the police power of the State, under certain conditions, to prohibit the existence of these fraternities on the campus of the University and in the student body, if it becomes necessary to do so in order to maintain discipline, good order, and harmony.

My contention is that the second section of the act of the Legislature in question, considered as a regulation, and that the order of the Board of Trustees above quoted, are unreasonable, arbitrary, *ultra vires,* in violation of the constitution and laws of the State of Mississippi, and in violation of that provision of the Fourteenth Amendment to the Constitution of the United States, which provides that "No State shall deny to any person within its jurisdiction the equal protection of the law." I further contend that the demurrer in this case is not well taken, and that the injunction granted by the distinguished chancellor in the court below should be made perpetual, even though this honorable court should be of the opinion that the act of the Legislature in controversy is in all respects constitutional; for the reason that the above-recited orders of the Board of Trustees are *ultra vires* and unwarranted even by the said act, and that the action of the Board of Trustees in enforcing said regulation is arbitrary and unreasonable in depriving defendant of his constitutional rights.

First, let us consider the unreasonableness of the second section of the act and of the above-quoted order of the Board of Trustees. Distinguished counsel and myself stand upon common ground in one respect; we both agree that the act of the Legislature in question was an exercise, or an attempted exercise, of the police power of the State. We differ radically, however, as to the power of the courts to determine the reasonableness or unreasonableness of the act of the Legislature. My position is that through whatever agency a State attempts to exercise its police power, whether by legislative enactment, by order of municipal boards, by order of boards of health, by the acts of sheriff or policemen on the street, or by order of school boards, the exercise of that power must be reasonable and with some regard to the constitutional rights of the individual or class which is attempted to be regulated. The authorities sustaining my position are abundant and will be submitted later on.

We submit that the second section of said act is unreasonable and unconstitutional in that there is a clear discrimination between the "ins" and "outs," between those who were, at the time the statute was enacted, students in the University and those who were not on that date members of the student body, and who might desire to be admitted as such. Under the provisions of said section there is no requirement that a student who was in the University and who, at the time, was a member of the Greek letter fraternities, should renounce his membership of the latter. There is nothing to prohibit a member of any fraternity, who was also a member of the University, from attending class examinations, lectures, and otherwise receiving instruction in common with others of his class. Such a student is punished, not by expulsion on account of his membership of a fraternity, but by being denied all class honors, diplomas, and distinctions conferred by the institution of which he is a student, and from competing for any prize or medal offered by his respective school or by any association or individual. We

can understand how a student in such a situation might be willing to forego all university honors in order to receive the instruction given by the University, and there is absolutely nothing in the law to prevent him from doing so. Now, how is it with the "outs"? What is the requirement of the statute as to the student who is a member of a Greek letter fraternity, yet not a member of the University, but desires to be admitted as one?

It is especially provided that if he will file an agreement upon entrance to the University, in writing, that he will not, during his attendance, affiliate with any fraternity or attend their meetings nor contribute dues, he shall in no way be subjected to the restrictions created by this section; and, under the order of the board requiring this pledge to be taken by the applicant for admission, the man who is out and refuses to sign the pledge cannot be admitted and permitted to enjoy the benefit of class examination, even though he may renounce all right to class honors, diplomas, and distinctions, etc. Those who were in at the time of the legislative enactment may retain their membership in fraternities and receive instruction at the University by foregoing its honors. Those who were out cannot get in even on this footing, but may only get in by taking a pledge renouncing all allegiance to these fraternities. They are then exempt from all restrictions as to class honors. Curiously enough this privilege is denied to those who are in.

Again, this second section is unreasonable in that the punishment inflicted is excessive. Here is the case: You have won first distinction in your class; you are entitled to the first honor of the University; your conduct has been unimpeachable; your character above reproach; you have done nothing to disturb good order and discipline in the student body; but it has come to the knowledge of the trustees, though perhaps unknown to any other student, that you have, during your attendance at the University, paid dues to some chapter of a Greek letter fraternity, say at Millsaps College or to some chapter in another State, and for this the

trustees degrade you by refusing the honor which is justly yours and grant it to another who is your inferior in scholarship and who for the remainder of his life is a living lie, made so by the great institution of learning and by the statute of your State.

The diploma granted by the University is the coveted goal for which every student strives and is the principal stimulus for all his struggles and efforts. It is the honor which binds him to his *alma mater*. I cannot imagine a more unreasonable, arbitrary, tyrannical regulation than that which would prohibit a young man or woman of the highest moral character and of the highest intellectual attainments and of the highest scholarship in the University from receiving from the Board of Trustees the honor which is his simply because he happens to be a member of a chapter in another part of the State or even in another State. But the act is much more radical than this; it prohibits any student who is a member of any of these orders anywhere from competing for any prize offered by an outside association or individual entirely disconnected with the University.

The Board of Trustees gave their case a hard blow in the adoption, on March 27, 1912, of the following order: "The board desires it understood that the Anti-fraternity Law, passed by the Legislature but recently adjourned, is not construed by it to apply to students already entered and who conduct themselves with that decorum always expected of Southern gentlemen." This order is not only unauthorized by any statute, but absolutely abrogates the statute approved February 27, 1912. Under their construction, or rather misconstruction, of the statute, no part of it applies to the "Ins." They can remain as students in the University and still retain their membership in the fraternities and not suffer the penalty which the statute imposes in not permitting them to receive class honors, diplomas, etc. What right had the board to construe this statute that does not permit a construction because it has absolutely no ambiguity in it? What right did they have to discriminate in favor of those

who were already members of the University and against the plaintiff in error and others who were out of it and who were knocking for admission? It is a part of the pledge required of plaintiff in error, that even during vacation it would be his constant endeavor so to act that no word or deed of his could even be remotely construed as being violative of the letter and spirit of what is known as the "Anti-fraternity Bill." The Board of Trustees construed the act to mean nothing even in letter or in spirit as to those students who were in at the time the law went into effect, but they require the plaintiff in error to pledge his honor that he would do nothing that could even be remotely construed as being violative of the letter and spirit of the act. This is a palpable and intentional discrimination made against plaintiff in error in denying to him the equal protection, with others, of the law. It is said that the letter killeth and the spirit maketh alive. The Board of Trustees killed both the letter and the spirit of the act in their determination to favor those who were in; but as to plaintiff in error, he is required to live up to the very letter of the law. If this is not arbitrary classification and arbitrary selection, which is denounced by the courts, I am unable to imagine what these terms mean.

The order of the Board of Trustees adopted September 16, 1912, embodying the pledge required of plaintiff in error, is no less unreasonable and *ultra vires* and in conflict with the statute which we are attacking as unconstitutional. Let it be remembered that, according to the declaration of counsel, to which I agree, the chapters of these societies in the University had already been abolished before the application of plaintiff in error for admission was made, and it is admitted by the demurrer that plaintiff in error had never been a member of nor in any way affiliated with or paid dues to any chapter organized at the University, and that he had no intention or purpose of in any way encouraging the organization of the fraternities at the University, and he was deprived of admission to the University simply because he was a member of and paid dues to a chapter at Millsaps College at Jackson, Mississippi.

The Supreme Court of Mississippi, in its opinion in this case, seems to have been contented with the declaration that "whether the act was a wise one or an unwise one, was a question for the Legislature to determine." This is most assuredly true, but it is certainly true that it is a question for the courts to determine whether the act is a *reasonable* exercise of police power and not violative of the constitutional rights of the plaintiff in error.

The very case relied upon and cited by the Supreme Court of Mississippi to sustain them holds as follows:

> "When a State, exercising its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having *reasonable* relation to that end as it may deem necessary in order to make its action effective."

We refer to the case of Purity Tonic & Extract Co. *vs.* Lynch, 226 U. S., 192. So this case sustains us in our contention that any exercise of police power must be *reasonable*.

We cite the following authorities:

> "It rests solely within the legislative discretion to determine when the public welfare or safety requires its exercise. Courts are authorized to interfere and declare a statute unconstitutional only when it conflicts with the Constitution. With the wisdom, policy or necessity of such an enactment, they have nothing to do. But while such are the legislative functions, there must * * * (see page 14) always be a reason for the exercise of the power, and rights granted by Federal and State constitutions cannot be violated by the mere declaration that an occupation or any particular act is injurious to public welfare."
>
> Words & Phrases, vol. 6, 5431, and cases cited.
>
> "The police power is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance. To justify the State in thus interposing its authority in behalf of the public, it must appear (1) that the interest of the

public generally, as distinguished from those of a particular case, requires such improvement; and (2) that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals." *Ib.*, 5427, and cases cited, including Lawton *vs.* Steele, 152 U. S., 133.

"Under the police power the State can interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the Legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests. But the character of police regulation, whether *reasonable*, *impartial* and *consistent* with the Constitution and the State policy, is a question for the courts, for the police power is too vague, indeterminate, and dangerous to be left without control, and hence the courts have ever interfered to correct an unreasonable *exertion* or a mistaken application of it; and when the Legislature passes an act which plainly transcends the limits of the police power of the State, it is the duty of the judiciary to pronounce its invalidity and to nullify the legislative attempt to invade the citizens' right, for to hold that every act of the General Assembly passed under the guise of an exercise of the police power or sought to be defended upon that ground was beyond judicial control would render every guaranty of personal right found in the Constitution of little or no value." Am. & Eng. Enc. of Law, vol. 22, 936, and cases cited.

In the case of Yick Wo *vs.* Hopkins, 118 U. S., 356, the court draws a distinction, which counsel fails to see, between cases of mere administration and those of unreasonable interference to the fundamental rights of life, liberty, and the pursuit of happiness. The court in this case holds:

"It is true that there must always be lodged somewhere and in some person or body the authority of final decision; and in many cases of mere *administration*, the responsibility is purely political; no appeal lying except to the ultimate tribunal of the public judgment exercised either in the pressure of opinion

> or by means of the suffrage. But the fundamental right to life, liberty and the pursuit of happiness considered as individual possessions is secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws. So that in the famous language of the Mass. Bill of Rights, the government of the 'Commonwealth must be a government of laws and not of men.'"

Again, as to the reasonableness of a statute, we cite Chief Justice Shaw in 12 Pickering:

> "It has generally been held in the State that whether the particular provisions of an act of legislation establishing means for ascertaining the qualification of those entitled to vote and make previous registration of such a condition precedent to the exercise of the right were or were not reasonable regulations and accordingly valid or void, was always open to equity as a judicial question."
>
> "The same principle has been more freely extended to the quasi-legislative acts of inferior municipal bodies in respect to which it is an ancient jurisdiction of courts to pronounce upon the reasonableness of their by-laws."

It will be noticed in this declaration of Chief Justice Shaw that he draws no distinction between legislative enactment and quasi-legislative acts of inferior bodies when it comes to the power of the courts to consider their reasonableness.

> "The police power, which belongs to every sovereign State, may be exercised by the Legislature, subject to the limitations of the Constitution, whenever the exercise thereof will promote the public health, safety or welfare. The power of the Legislature to decide what laws are necessary to secure these objects is subject to the power of the courts to decide whether an act purporting to promote the public health, safety or welfare has such a reasonable connection therewith as to appear upon inspection to be adapted to that

end." *Re Viemeister*, 176 N. Y., L. R. A., 70, 796.

"As a general proposition, it may be stated, it is the province of the law-making power to determine when the exigency exists, calling into exercise this power. What are the subjects of its exercise is clearly a judicial question. There must necessarily be constitutional limitations upon this power. It is essential that such regulations must have reference to the comfort, safety or welfare of society." *Town of Lake View vs. Rose Hill Cemetery Co.*, 70 Ill., 191; 22 Am. Rep., 71.

In this case it was held that a statute prohibiting the cemetery company from using its lands for burial purposes was not a valid exercise of the police power.

"This power is inherent in the State, and it cannot part irrevocably with its control over that which is for the health, safety and welfare of society. But such regulations must be what they purpose to be, police regulations, and must be *reasonable* when applied to corporations or individuals. What are *reasonable* regulations, and what are subjects of police powers, must necessarily be *judicial questions.* The law-making power is the sole judge when the necessity exists, and when, if at all, it will exercise the right to enact such laws."

"Like other powers of government, there are constitutional limitations to its exercise. It is not within the power of the General Assembly, under the pretense of exercising the police power of the State, to enact laws not necessary to the preservation of the health and safety of the community that will be oppressive and burdensome upon the citizen. If it should prohibit that which is harmless in itself, or command that to be done which does not tend to promote the health, safety or welfare of society, it would be the duty of the courts to declare such legislation void." *Toledo, Wabash and Western Railway Co. vs. City of Jacksonville,* 67 Ill., 37; 16 Am. Rep., 611.

We also cite the case of *Miller vs. Fitzburg,* 180 Mass., 32; 61 N. E., 277, which holds that a statute may be nullified by the courts because of its unreasonableness in other cases besides those involving the exercise of police power.

In the case of *Cotting vs. Godard,* 183 U. S., 79, Justice Brewer held that: "While it was within the power of the Legislature to fix rates for corporations, they must be reasonable and the extent of judicial interference is protection against unreasonable rates." And again: "All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition." This case cites the case of *Bell's Gap R. Co. vs. Pennsylvania,* 134 U. S., 232.

In the case of *Gulf, Colo. & Santa Fe Railway Co. vs. Ellis,* 165 U. S., —, involving a statute imposing an attorney's fee not to exceed $10, in addition to costs, upon railway corporations failing to pay certain claims within a certain time after presentation, was held unreasonable, and in this case the court cites many authorities whose statutes were held invalid because of their unreasonableness.

We now come to the consideration of the authorities directly relating to the government of schools and colleges and the right of the citizens to admission thereto. First, it is important to determine the nature of this right in order to properly appreciate that it should never be arbitrarily or unreasonably denied. The case of *Ward vs. Flood,* 46 Cal., —; 17 Am. Rep., 405, is the leading one and has been several times cited by the Supreme Court of the United States and many times by the Supreme Court of the different States. In this case the court says:

> "The opportunity of instruction at public schools is afforded the youth of the State by the statute of the State, enacted in obedience to the special command of the constitution of the State. The advantage or benefit thereby vouchsafed to each child, of attending a public school, is, therefore, one derived and secured to it under the highest sanction of positive law. IT IS, THEREFORE, A RIGHT—A LEGAL RIGHT—AS DISTINCTLY SO AS THE VESTED RIGHT IN PROPERTY OWNED IS A LEGAL RIGHT, AND AS SUCH IT IS PROTECTED, AND IS ENTITLED TO BE PROTECTED BY ALL THE GUARANTEES BY WHICH OTHER LEGAL RIGHTS ARE PROTECTED AND SECURED TO THE POSSESSOR."

Evidently such a right should not be trifled with and never denied unless the general welfare, health and morals or discipline of the school to which application is made for admission is promoted by such a refusal. It is true that it is within the police power of the University authorities to make reasonable regulations denying admission to or disciplining students after admission to the University when the public health, morals or the good order of the institution requires it. For instance, there is a long line of Supreme Court decisions holding that a rule requiring all students to be vaccinated before entering school is a *reasonable* health regulation, and the privilege of attending school is subject to such reasonable restrictions as the law-making power, within constitutional limitations, may see proper to impose, and that such a rule is a valid exercise of the police power necessary to promote public safety, health and welfare. The case of *Bissell vs. Davidson*, 65 Conn., 183; 29 L. R. A., 257, and the case of *Viemeister vs. White*, 179 N. Y., 235; 70 L. R. A., 796, are leading cases along this line. But these very cases hold that this police power "is subject to the power of the courts to decide whether an act or rule to promote the public health or safety has such connection therewith as to appear upon inspection to be adapted to that end."

In this connection I call attention to the authorities on the question of the reasonableness of the regulation or a

statute controlling or disciplining students for conduct out of school or beyond the jurisdiction of the school. These authorities are especially noteworthy for the reason that section 2 of the statute under consideration is extraterritorial in its application and prohibits affiliation with any secret society anywhere, not only in the University, but anywhere else in the State or even without the State. Many of these authorities are cited in a note to the case of *Kinzer vs. Toms*, 3 L. R. A. (N. S.), 496, Iowa case. In this case the rule of the school board forbidding pupils to play football under the auspices of the school was held not unreasonable or in excess of the authority of the board, although conducted on holidays and away from school grounds. But this decision, and also the case of *Burdick vs. Babcock*, 31 Iowa, 562, which is cited in the note, are upon the ground that football is detrimental to good order and unfits those who are engaged in it for study during school hours, and I also find this broad declaration by the court in the main cases cited:

> "They (referring to the school authorities) have no concern, it is true, with the individual conduct of the pupils wholly outside the school room and school grounds while they are presumed to be under the control of their parents or after they are beyond the age of parental control to be governed by the rules which regulate the conduct of all members of the body politic."

And in this connection the court sustains the rule in question because it "directly relates to and affects the management of the school and its efficiency."

We find in this note a quotation from Mechem's Public Officers, section 730, as follows:

> "There is no question that the power of school authorities over pupils is not confined to the school room or grounds, but extends to all acts of the pupils which are detrimental to the good order and best interests of the school."

This is the principle upon which it is held that a pupil may be punished for disrespectful language in regard to a teacher after he has returned home and is with another schoolmate.

Lander vs. Seaver, 32 Vt., 114.

For the same reason a rule prohibiting quarreling, fighting and the use of profane language among students on the way home was upheld.

Deskins vs. Gose, 85 Mo., 485.

For like reason the school authorities may exclude a child for immoral character. But all the authorities, or at least the great weight of authority, hold that: "Unless the act complained of reaches within and affects the conduct and discipline of a school the teacher's authority is not allowed to control the child after he reaches home. Thus a pupil cannot be expelled for violating a rule forbidding pupils to attend social gatherings where such pupil returns home and attends such gatherings with the consent of his parent."

See cases cited under the same note.

But this question is entirely set at rest by the well-considered case of *Hobbs vs. Germany,* 94 Miss., 469; 49 Sou. Rep., 515. In this case a rule requiring all pupils of the school to remain in their homes and study between designated hours in the evening was held unreasonable. The court in this case cites with approval the case of Dritt *vs.* Snodgrass, 66 Mo., 286; 27 Am. Rep., 343, in which it is held that:

> "If the board of directors of a district school can prescribe a rule which denies to the parent the right to allow his child to attend a social gathering, except upon pain of expulsion from a school which the law gives him the right to attend, may they not prescribe a rule which would forbid the parent from allowing the child from attending a particular church, or any church at all, and thus step *in loco parentis* and supersede entirely parental authority?"

Distinguished Chief Justice Mayes, in delivering the opinion in this case, held that:

> "Whenever a question arises as to whether or not the power of the school authorities to make a certain rule or regulation is reasonably within the scope of the power conferred on them by law, the question is undoubtedly subject to inquiry by the courts."

It is significant in this case that the trustees were claiming to act under the authority of a statute in making the rule in question, and the court decided that the rule made by order of the Board of Trustees was *ultra vires* and its adoption was not authorized by the statute. So in the instant case, the distinction that counsel makes between the rule and a statute is not well taken, because after the enactment of the statute the board of trustees of the University adopted certain rules which they claimed were authorized by the statute, and which we claim were *ultra vires*. So the question at last arises whether the rules of the board are unreasonable and infringe upon the constitutional rights of the plaintiff in error. In other words, the statute does not enforce itself, but must be enforced by rules, as section 3 of the statute provides. This section reads: "This act shall be enforced by the trustees and faculties by such rules and punishments as they prescribe." If the act is unconstitutional, of course, the rules have no statute to authorize it. If the act is constitutional, then the question must arise as to whether the rules adopted to enforce the statute are reasonable and whether they are authorized by the statute or not.

We come now to the consideration of the only case in the books, so far as I know, that is analogous to the instant case, and for that reason I desire to review it at some length. I refer to the case of *Stallard vs. White et al.*, 92 Ind., 278; 42 Am. Rep., 496. This was an application for mandamus to compel the authorities of Purdue University to admit complainant's ward as a student. The complainant states that

Hawley, the ward, was a taxpayer; that said University is the agricultural college of the State and supported by donations of public lands and by appropriations made by the State; that said Hawley was in all respects eligible and entitled to admission; that the defendants constituting the faculty of the University had adopted the following rule for the government of the University:

> "No student is permitted to join or be connected as a member or otherwise with any so-called Greek or other college secret society; and as a condition of admission to the University, or promotion therein, each student is required to give a written pledge that he or she will observe this regulation. A violation of this regulation and pledge forfeits the right of any student to class promotion at the end of the year, and to an honorable dismissal."

In the application of Hawley for admission, the following pledge was required of him:

> "I do hereby state upon my honor that in the month of April last, when I applied for and received an honorable dismission from Purdue University, I was not a member of any so-called Greek fraternity, or other college secret society, and at the time I connected myself with a chapter of the Sigma Chi fraternity, I did not intend returning to Purdue University. I do solemnly promise that I will disconnect myself as an active member of the Sigma Chi fraternity during my connection with Purdue University."

Hawley refused to sign said pledge and the faculty refused to admit him as a student. The lower court sustained the demurrer to the application and the Supreme Court reversed the case. The following extracts are taken from the opinion of the court:

> "1. Purdue University is an educational institution sustaining relations to the people at large analogous to those occupied by other public schools and

colleges of the State maintained at public expense, and one *in which all the inhabitants of the State have a common interest.*

"2. Having in view the various statutes and the decisions of the courts, we think it may be safely said that *every inhabitant of this State, of suitable age,* and of reasonably good moral character, *is entitled to admission* as a student in the Purdue University.

"3. It is clearly within the power of the trustees to absolutely prohibit any connection between the Greek fraternities and the University.

"4. The trustees have also the undoubted authority to prohibit the attendance of students upon the meetings of such fraternities, or from having any other active connection therewith, so long as such students remain *under the control of the University, whenever such attendance or active connection tends in any material degree to interfere with the proper relations of students to the University.*

"5. If mere membership in any of the so-called Greek fraternities may be treated as a disqualification for admission as a student in a public school, then membership in any other secret society may be converted into a like disqualification, and in this way discrimination might be made against large classes of the inhabitants of the State, in utter disregard of the fundamental ideas upon which our entire educational system is based.

"6. So much of the regulation adopted by the faculty, as may be construed to impose disabilities on persons already members of the Greek fraternities, and as requires a written pledge as a condition of admission, is both *ultra vires and palpably unreasonable,* hence inoperative and void, and the pledge tendered Hawley was one which the faculty had no legal right to demand as a condition of his admission.

"7. The court further held in this case that 'The admission of students into public educational institutions is one thing and the government and control of students after they are admitted and have become subject to the jurisdiction of the institution is quite another thing.'"

From this decision, we reach the following conclusions:

First, the University of Mississippi, like Purdue University, being maintained at public expense, "all the inhabitants of the State have a common interest in it, and every inhabitant of the State, of good moral character, is entitled to admission in the University of Mississippi."

Second, it is clearly within the power of the trustees to absolutely prohibit any connection between Greek fraternities and the University.

Third, the trustees also have the authority to prohibit students from attending the meetings of such fraternities or from affiliating therewith as long as they remain under the control of the University. But this authority cannot be arbitrarily exercised and can never be exercised except when, in the language of the court, *"such attendance or active connection tends in any material degree to interfere with the proper relations of the students to the University."*

Fourth, mere membership in or affiliation with a Greek fraternity cannot be made a disqualification for admission as a student in a public school. If so, then membership in the Knights of Pythias, Knights of Honor, Woodmen of the World, the Masonic order, or any other secret society, may be made a disqualification, and thus an unthinkable discrimination may be made against large classes of the inhabitants of the State, in utter disregard to the fundamental ideas upon which our entire educational system is based.

Fifth, it will be observed that this case holds that the admission of students is one thing and the control and government of students after admission is another thing. The reason for this discrimination is that mere membership in a secret society is not *per se* a disqualification of membership in a University; that mere affiliation with such society is not inherently a menace to the proper discipline of the school and it is, therefore, the duty of the trustees in each case to investigate and determine on the merits of that case whether a particular student should or should not be retained, punished or excluded. Certainly he should not be

for mere membership in a society at Millsaps College and for mere affiliation with that society during the vacation of the University. Action in any case by the trustees on the guilt or innocence of any student on a charge that he has violated a *reasonable* rule and disturbed the discipline of the University, must be had *after* and not *before* the offense is committed. While action is left to the discretion of the school authorities, it must be a *reasonable* discretion. Rules adopted and action on these rules must be *reasonable* and not *arbitrary* and must not conflict with the constitutional rights of the student. Trustees have no more right to exclude a student for mere membership in a society than they have to deny him admission on that account. It would be the baldest absurdity to say that the trustees could not refuse admission to a student because of his connection with the secret societies and then to hold that the next day he might be expelled on that account; that they must admit the student even if they expelled him the next day.

Sixth. And rule or regulation of the University must be a reasonable one, and whether it is or not is a question for the courts.

We now come to the consideration of two cases that seem to be confidently relied upon by counsel for defendants in error, and which, we submit, have no sort of analogy or application with the instant case.

The first is the case of Wayland *vs.* Board of School Directors, 7 L. R. A. (N. S.), 352 (Wash., 86 Pac., 642). In this case the plaintiff sues for himself and other members of the Gamma Eta Kappa Society and prays an injunction against the School Directors of School District No. 1 in Seattle, King County, Wash., to restrain them from enforcing certain rules which deprive members of Greek letter fraternities from all privileges of the school except attending classes. Complainant alleges that such rules are in excess of lawful authority; that the meetings of the fraternity are held every two weeks after school hours at the homes of their

parents. The trial court found the following facts, and these facts certainly are not the facts of the instant case:

> "That the directors instituted a careful investigation and found the influence of this society deleterious and adopted the rules and regulations after this investigation was made."

The court further found as a fact that the *influence of said society permeating said school injuriously affected the good order and discipline thereof.* It was also found that the membership in this fraternity was confined to *high-school students.* It was also found that the "Board of Directors is authorized and it is its duty to take such reasonable action by the adoption of rules that will prevent this influence." It was further found that the rules were modified from time to time to meet the emergencies arising from the *activities of the societies in initiating members.*

It was further found that the fraternity, through its organs, defied the authority of the directors and concluded as follows:

> "The evidence shows beyond a doubt that this secret organization fosters a clannish spirit of insubordination which results in much evil to the good order, harmony, discipline, and general welfare of the school."

From this decision, as from the last one cited, we can see that the Board of School Directors did not act hastily or capriciously, but after a full investigation adopted a resolution finding that the influence of the society was extremely harmful, and that it seriously affected the good order and discipline of the school. It must be noted also, and we call especial attention to the fact, that in this case there was a regularly organized chapter of the Gamma Eta Kappa in the school composed exclusively of students of the school, and that complainant was both a member of the school and of the fraternity, and all the harm done in this case arose

from the fact that there was an organized chapter composed exclusively of the members of the school, and complainant was a member of this chapter. In the instant case it is admitted there is no chapter now organized in the student body of the University; that plaintiff in error never was a member of any chapter in the University and never proposes to be, and never proposes to in any way connect himself with any sort of activities or the encouragements or organization of any Greek letter fraternity at the University; that his sole offense is that he is a member of a chapter at Millsaps College and the reason that he is expelled from the school is not because of his activities in the University as a Greek letter man and not because of his connection with any chapter in the University, but because he refuses to take a pledge that he will in no way affiliate with any chapter in this State or any other State, even in vacation. So that this case can have no possible application to or bearing upon the second section of the statute of Mississippi, the constitutionality of which we are considering. It is true that in the Hawley case severe punishment was inflicted upon the students by denying to them certain privileges, such as participation in athletic, literary, etc., organization. But this punishment was inflicted, not simply because of mere membership in or affiliation with a secret society in another part of the State, which could possibly have no effect on the good order of the school, but it was inflicted *for maintaining an organization in the school and exclusively among the students of the school, which was in open and declared contempt of good order and discipline.*

The other case relied on by counsel is the case of Wilson *vs.* Board of Education of Chicago, 233 Ill., 464; 84 N. E., 697; 15 L. R. A. (N. S.), 1137. In this case an appeal was filed by complainants to enjoin the defendant from enforcing a certain rule denying "any secret society *which may now exist in the school's public recognition,* including the privilege of meeting in the school buildings, and forbidding

such organizations the use of the school name. That no student who is known to be a member of a fraternity be permitted to represent the school in any literary or athletic contest or other public capacity."

It fully appears from the opinion in this case that that rule was adopted after a thorough investigation and report was made by the superintendent of city schools. The court says in its opinion:

> "The rule adopted by the Board of Education, which is set out in full in this bill, says upon its face that it was not the result of hasty and ill-considered action."

It appears from the opinion of the court that, by the statute of Illinois, the public schools of the city of Chicago are under the control of the Board of Education and they are given full power and authority required for the proper management of the schools, and it is made the duty of the board to establish all such by-laws for the government and maintenance of a uniform system of discipline in the several schools as may, in their opinion, be necessary. It also appears from the opinion that the students were only prohibited *from* the privilege of meeting in the school buildings and from representing the school by name in public contests and public capacities.

So it will be seen that this case, like the previous one last cited, has no bearing upon the question of the constitutionality of section 2 of the act of the Legislature of Mississippi under consideration.

We now call attention to the case of Bradford *vs.* Board of Education, a California case, found in 121 Pac. Rep., 929, involving the constitutionality of a statute in California enacted in 1909, found in the Laws of 1909, page 332, entitled: "An act to prevent the formation and prohibit the existence of secret, oath bound fraternities in the public schools."

The act has only two sections. Section 1 provides as follows:

> "From and after the passage of this act, it shall be unlawful for any pupil enrolled as such in any *elementary* or *secondary* school of this State to join or become a member of any secret fraternity, sorority, or club, wholly or partially formed from the membership of pupils attending such public school, or to take part in the organization or formation of any such fraternity, sorority or secret club, provided nothing in this section shall be construed to prevent any one subject to the provision of this section from joining the order of Native Sons of the Golden West, Native Daughters of the Golden West, or other kindred organization, not directly associated with public schools of the State."

Section 2 provides that the Board of Trustees shall have full power to enforce the provisions in section 1 by suspension or expulsion.

This is the whole act.

Following the enactment of this statute the Board of Education promulgated certain rules for the enforcement of the statute.

Doris Bradford, the complainant, while enrolled as a pupil, joined a secret society *existing in the Girls' High School* and was, I believe, expelled. This was an action of mandamus to compel her reinstatement, to which a demurrer was sustained.

In support of her contention that the act is void, appellant claimed that it contravenes section 21, article 1, of the constitution of California, which is as follows:

> "Nor shall any citizen, or class of citizens, be granted privileges or immunities, which, upon the same terms, shall not be granted to all citizens."

And also that part of section 25 of article 4 providing that—

> "the Legislature shall not pass local nor special laws granting to any corporation, or individual or association, any special or exclusive privilege or immunity."

It was argued by counsel for complainant that this act grants to normal schools and colleges an immunity and special privilege to join societies, clubs, etc., and that it grants special privileges to Native Sons of the Golden West and Native Daughters of the Golden West.

Construing the provision of the constitution first cited, the court said:

> "A law applying uniformly to all citizens of a particular class does not violate this section if the class is founded on some natural, intrinsic or constitutional distinction." "If the individuals to whom the legislation is applicable constitute a class characterized by some substantial qualities or attributes of such a character as to indicate the *necessity* or *propriety* of certain legislation restricting that class, such legislation if applicable to all members of that class is not violative of our constitutional provisions."
>
> "To warrant a court in adjudging the act invalid on this ground, it must clearly appear that there was no reason to warrant the legislative department in finding a difference and making the discrimination.
>
> "Applying this construction, it is apparent that the younger or more immature pupils of the public schools may quite properly form a class and be made the subject of this character of legislation. Normal schools and colleges are attended by students who are preparing for the serious affairs of life and being older in years and with wider experience are better qualified than younger pupils attending elementary or secondary schools.
>
> "Neither does the exception in the statute of Native Sons of the Golden West and Native Daughters of the Golden West constitute an invalid discrimination. The act itself requires that they 'be not directly associated with the public schools of the State.'
>
> "It is clear that the Legislature only intended to discountenance the secret societies in the elementary and

secondary schools which are formed almost entirely of the pupils which were calculated to diminish the efficiency of the educational system, etc.

"We hold that the act is general and not special."

Lastly, it was contended by attorneys for complainant that the statute is repugnant to the Fourteenth Amendment to the Federal Constitution, on the ground that it deprives a citizen of the right to attend a public school in the State. The court says:

> "The part of the Constitution relied on by the appellant reads, 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' "

"It has been held," says the court, "that the rights and privileges granted to citizens which depend solely on the laws of the State are not within the constitutional prohibition," citing Ward *vs.* Flood, 17 Am. Rep., 405.

Elsewhere in the opinion the court takes occasion to say:

> "Laws have been enacted in Kansas, Ohio, Indiana, and Minnesota either forbidding secret societies or placing them under control of these laws and local regulations have come before the courts of these States and such courts uniformly held valid, reasonable rules adopted by school authorities to prevent the establishment and development of these secret societies in preparatory schools."

The cases cited are as follows:

Wilson *vs.* Board of Education of Chicago, 233 Ill., 15 L. R. A. (N. S.), 1137.

Wayland *vs.* Board of School Directors, 7 L. R. A. (N. S.), 352; Wash., 86 Pac., 642.

People *vs.* Wheaton College, 40 Ill., 186 (Private College).

The foregoing is a complete summary of the California case.

From a careful examination of this case, we make the following observations:

1. The case in no way meets the attack that we have made on the second section of the Mississippi statute.

2. The questions raised by counsel for complainants in this case, under section 21, article 1, and section 25, article 4, of the California Constitution, do not arise in the construction of the Mississippi statute. We have no provisions in the Mississippi Constitution analogous to those cited in the California Constitution, but if it be contended that the principle of these constitutional provisions is fundamental and accord with the spirit of the Mississippi Constitution, even then the contention of counsel for complainant, that the privilege of joining secret fraternities is granted normal schools and colleges and not to elementary and secondary schools, thus making an unconstitutional discrimination, cannot arise under our statute.

The same may be said in favor of the discrimination in favor of the Native Sons of the Golden West and others. It may be conceded, however, that the provision of the California statute does not violate the two provisions of the California Constitution cited. And, at the same time, it may be well contended that the very spirit of these provisions of the California Constitution are grossly violated by the Mississippi statute. For instance, the exception in favor of the Native Sons of the Golden West and Native Daughters of the Golden West, and other kindred organizations, in the California statute is based upon the fact that they are not associated directly with the public schools, and by the very terms of the act students are not forbidden to join any order not connected with the public schools. Of course the discrimination is based upon the fact that any society not associated with the public schools could not be detrimental to the good order and discipline of the school.

But the Mississippi statute affects the constitutional rights and immunities of students who are in no way associated with any order or society, even remotely, that has any sort of association or connection with the student body.

We have in the Mississippi case a class of individuals legislated against and denied the privileges of the University of Mississippi who are not, in the language of the Supreme Court of California, "characterized by some attributes of such a character as to indicate the *necessity* or *propriety* of such legislation," because it is not necessary to and does not even tend to promote good order in the University.

The statement of the court that laws have been enacted in Ohio, Indiana, Minnesota, and Kansas either forbidding secret societies or placing them under control, and that these laws and local regulations have come before the courts of these States and that such courts have uniformly held valid reasonable rules adopted by school authorities to prevent the establishment and development of these secret societies in preparatory schools, is misleading in so far as the assertion that these laws have been upheld by the courts. None of the cases cited in this connection have the slightest allusion to the construction of any statute. The Supreme Court, however, is correct in stating that in all of these decisions the courts have uniformly held as valid "all reasonable rules adopted by school authorities," and this is significant because this is the real test after all.

All of the cases cited in this connection by the Supreme Court of California have been reviewed in this brief except the case of the People *vs.* Wheaton College, 40 Ill., 86; and in this case it appears that Wheaton College was a private institution, not supported by public taxation, and in no way governed by any laws of the State. They, therefore, had a right to adopt such rule for the admission of students or control of students after admission as they pleased, whether reasonable or unreasonable.

The court, however, in this connection does not cite Stallard *vs.* White, 82 Ind., 278, which we have reviewed in this

brief, and in which the rules of Purdue University against secret societies were not upheld.

In this connection I will state that I have examined with some care all of the decisions of the Supreme Courts of Kansas, Ohio, Minnesota, and Indiana relating to the government of public schools and colleges as far back as 1907, and I find no decision in those States construing any such laws.

I did not examine the cases prior to 1907 because at that date the annotator of Lawyers' Reports Annotated makes the statement in a note to case of Weylan *vs.* School Directors, 7 L. R. A. (N. S.), 352, that this case and that of Stallard *vs.* White were the only cases in which the question of the right of school authorities to exclude pupils from educational institutions supported by the State because of their connection with secret societies appears to have been raised.

The California case reviewed is, therefore, the only case which I have seen construing a statute of this character and, for that reason, I have been somewhat careful in its examination and review.

I do not hesitate to say that this act of the Mississippi Legislature is obnoxious to the last paragraph of the first section of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the law. The evolution and development of a more and more liberal judicial interpretation of this clause of the Fourteenth Amendment is most interesting and important in the consideration of this case. Among the first interpretations of the Fourteenth Amendment to the Constitution of the United States by the Supreme Court is the opinion of the court in the Slaughter House Cases, 16 Wall., 36. In this case the court, referring to the "equal protection" clause, says:

> "In the light of the history of these enactments and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States

> where the newly emancipated negroes resided which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden."

The court, continuing, says:

> "We doubt very much whether any action of a State, not directed by way of discrimination against the negroes as a class or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency that a strong case would be necessary for its application to any other."

Since then there have been many decisions by the Supreme Court of the United States and by the Supreme Courts of the different States, too numerous for citation, holding that the "equal protection" clause of the Constitution was not only for the protection of the negro, but for every class of citizens and every individual of whatever race or station and also for every corporation doing business in a State.

Certainly it is now clearly understood that it is as much for the benefit of the white man as for the negro.

In the case of Boyd *vs.* United States, 116 U. S., 616, the court says:

> "Illegitimate and unconstitutional practices can only be obviated by adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed. A close and literal construction deprives them of half their efficiency and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of the courts to be watchful of the constitutional rights of the citizens and against any stealthy encroachment thereon. Their motto should be '*obsta principiis.*'"

This declaration quoted and approved in case of Gulf, Colo. R. R. Co. *vs.* Ellis, 165 U. S., 666.

Guided by this motto, the Supreme Court has been more and more liberal in construing constitutional guarantees, until in the case of Yick Wo *vs.* Hopkins, above cited, they held that a Chinaman who is an alien and not even eligible to citizenship in the United States is a person entitled to the equal protection of the laws; and in the case of Southern Railway *vs.* Green, 216 U. S., 403, it is held that the Southern Railway Company, although not a corporation under the laws of Alabama, was a person within the jurisdiction of Alabama, within the meaning of the Fourteenth Amendment, and entitled to the benefits of the equal protection of the laws of Alabama.

The Supreme Court of the United States has twice said:

> "No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews: 'When we consider the nature and theory of our institutions of government, the principles on which they are supposed to rest, and review the history of their development, we are constrained to conclude they do not mean to leave room for the play and action of purely personal and arbitrary power.'"

See Ellis case above cited and Cotting *vs.* Goddard, 183 U. S., 79. Both these cases also contain the following remarkable statement:

> "The first official action of this Nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. While such declaration of principle may not have the force of organic law, the latter is but the body and letter of which the former is the thought and spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than

> the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

In the case of Cotting vs. Goddard, just cited, the court cites, with approval, the following:

> "The equal protection of the laws, which, by the 14th Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. This, as has been often observed, is a government of law and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guaranties, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property legally acquired and legally held."

The case of Southern Railway vs. Green, 216 U. S., —, is cited with approval by the Supreme Court of Mississippi in two cases: First, the case of State vs. L. & N. R. R. Co., 57 Sou. Rep., 918; second, the case of Adams vs. Standard Oil Company of Kentucky, 58 Sou. Rep., 692. Both of these cases hold that a foreign corporation doing business within a State other than that of its creation, having an office and agents therein, and subject to the process of the courts of such State, is a person within the meaning of the "equal protection" clause of the Fourteenth Amendment.

What our Supreme Court has said in this case by way of interpretation of the "equal protection" clause of the Fourteenth Amendment certainly has a most important bearing on the question of the constitutionality of the act under consideration. It is a long leap from "the protection of the rights of an emancipated negro slave to the protection of the rights of a foreign corporation doing business in a State."

While we are considering the decisions of the Supreme Court of Mississippi, we call attention to the case of McFarland *vs.* Goins, 50 So. Rep., 493, declaring unconstitutional an act of the Legislature providing for the establishment of agricultural high schools. By section 1 of this act it was provided that the school board of any county could be authorized to establish an agricultural high school for the instruction of the white youth of the county. Section 2 provided that the schools should be sustained by taxation of all the property, that is, on the property of black and white. Chief Justice Mayes, delivering the opinion of the court, said:

> "If the Fourteenth Amendment (referring to the equality clause) means anything, it certainly means that all citizens shall stand equally before the law, and that no special privileges or benefits shall be given to one class of citizens to the exclusion of the other as a matter of statutory enactment."

It will be observed that this decision, while extending the protection of the law to a negro, is general in its nature and embraces all citizens of every class and every condition and every color, who are all declared to stand equally before the majesty of the law.

There is a long line of decisions declaring unconstitutional statutes denying to negroes equal privileges in the public school of similar import to the decision of the Supreme Court of Mississippi just cited, and they are all of the same character. They make no distinction between the rights of the negro and the rights of any other class of citizens. The language of the courts in all these cases is broad and embraces all classes of citizens. For instance, in the case of Ward *vs.* Flood, 48 Cal., —, above cited, the court says:

> "The opportunity of instruction in public schools is, therefore, a right, a legal right, as distinctly so as the vested right in property owned is a legal right, and as such it is protected and is entitled to be protected by all the guarantees by which other legal rights are protected and secured to the possessor."

We again cite this declaration of the Supreme Court of California in this connection, especially to show that the Supreme Court of California did not regard the right of a negro to go to a public school as any more sacred than other legal rights of any other class of citizens; as, for instance, the right of a student of the University of Mississippi to affiliate with any secret society so long as he behaves himself.

After reading these declarations of the highest courts, construing this provision of the Constitution of the United States, which declare that every one within the jurisdiction of the State is secured equal protection with every other person within the jurisdiction of the State, not only to his life, to his liberty and to his property, but also to the pursuit of happiness, it is impossible for me to understand how a State law can deprive a citizen of the State of Mississippi who pays his taxes in support of the University from attending said University on equal terms and with equal privileges and equal rights with every other student simply because he affiliates with a secret fraternity which has no sort of connection with the University and is not known and recognized among the student body. "The pursuit of happiness" is as much a substantive and constitutional right as life, liberty, and property, and any one is entitled to the pursuit of happiness in his own way and according to his own pleasure so long as it does not interfere with anybody else. He can pursue his own happiness by association with a Greek letter fraternity, a Masonic fraternity, or any other secret order, or any church, or any association, or any social organization that he pleases, and it is nobody's business so long as he does not interfere with the good order, harmony, health, and morals of the University; and simply because he indulges in the harmless pursuit of happiness in his own way he cannot be denied a diploma or class distinctions which the law guarantees to him and which is as much a substantive right and just as sacred as the right to attend classes in the University.

But, says counsel, while we admit that complainant is entitled to the equal protection of the laws, this equal protection of the law has not been violated or abridged simply because all similarly situated are treated alike. Unfortunately this is not true. We have already pointed out that the law sharply makes a difference between the "Ins" and "Outs" and there is a most unjust discrimination between the two. As already pointed out, the "Ins" who are members of a Greek letter chapter can remain in and attend class examinations and get the instruction afforded by the University under the penalty that they receive no class honors. But the "Outs" who are not members of the University, but are members of a Greek letter chapter, "upon entrance" to the University must take a pledge and comply with the other rules and regulations prescribed by the University. There is nothing in the statute to prevent the "Ins" from retaining their membership in a chapter and in the University or affiliating with the same, but the applicant for admission, after the enactment of the law, is required to take an oath that he regards as binding in vacation; that it shall be his constant endeavor so to act that no word or deed may be even remotely construed as being violative of the Anti-fraternity Law. But the "Outs" are even more violently and outrageously discriminated against by the order of the Board of Trustees of the University of Mississippi, adopted March 27, 1912, in which they take the authority to construe the "Anti-fraternity Law" as not in any sense applying to those already in as long as they conduct themselves as Southern gentlemen. Just why all those who were not members of the University at the time of the enactment of the law should not be trusted to act as Southern gentlemen on the same terms as those who were in the University we are utterly unable to see.

But suppose counsel is correct in his statement in this case and that it is a fact that all similarly situated with the complainant have been treated alike, and, therefore, the complainant has not been denied the equal protection of

the law. Let the Supreme Court of the United States and our own State answer distinguished counsel on this point. In the case of Gulf, C. & S. F. R. R. Co. *vs.* Ellis, already cited, the court said:

> "But it is said that it is not within the scope of the Fourteenth Amendment to withhold from the States the power of classification, and that if the law deals alike with all of a certain class, it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without such basis."

In this case the court cites with approval the case of State *vs.* Loomis, 115 Mo., 307, in which it is held:

> "Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

In the case of Southern Railway Company *vs.* Green, 216 U. S., 539, already cited, the court approves the opinion of the Gulf, C. & S. F. R. R. Co. *vs.* Ellis, and holds:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws,

> such classification must be based upon some real substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot arbitrarily be made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification."

This is a case involving the constitutionality of a statute providing for the payment of a franchise tax upon all foreign corporations doing business in the State of Alabama. This court in the case of Adams *vs.* Standard Oil Co. of Kentucky, 53 So. Rep., 692, cited with approval the quotation we have just made from the opinion in the case of Southern R. R. Co. *vs.* Green. It also cites with approval the case of Ballard *vs.* Oil Co., 81 Miss., 507, in which the court says:

> "Multiplied citations from the United States Supreme Court could be made, but the thought running through them all, as we understand them, clearly is that the classification is not to be made, except upon the basis of some difference between the business of those favored and the business of those not favored—a substantial difference warranting the classification."

In the case of McFarland *vs.* Goins, 50 So. Rep., 493, already cited, this court held:

> "If the Fourteenth Amendment means anything it means that no special privileges or benefits shall be given to one class of citizens to the exclusion of the other, as a matter of statutory enactment."

Continuing, the court held:

> "The law is only void when its object or necessary effect is to abridge the privileges or immunities of a certain *class* of citizens, or deny them the equal protection of the laws."

In the case of Stallard *vs.* White, above cited, the court said:

> "If mere *membership* in any of the so-called Greek letter fraternities may be treated as a disqualification for admission as a student in a public school, then membership in any other secret society may be converted into a like disqualification, and in this way discrimination might be made against large *classes* of the inhabitants of the State, in utter disregard of the fundamental ideas upon which our entire educational system is based."

From all these cases it is clear that a discrimination against an entire class which is unjust and deprives them of their constitutional right is as much condemned as a discrimination against an individual. The deprivation of a man's liberty or any of his constitutional rights is not remedied or made lawful because the same wrong is inflicted upon a number of others. It is absurd to say that a wrong upon one individual justifies a wrong upon another. Classified legislation or unjust legislation against classes is always condemned. The authorities relied on by counsel only mean that when the police power can be justly exercised against a class it must be exercised on all members of that class alike and not on a part of them only. For illustration: Under a rule requiring vaccination as a condition for admission to a school, all of a class must be vaccinated and not a part only. It will be noted that all the authorities above cited from the Supreme Court of the United States hold that the classification must have some relation to the end to be accomplished. In the instant case the end to be accomplished is the good order, harmony and discipline of the University. What relation to this end can mere membership in a Greek letter fraternity beyond the jurisdiction of the University have to the accomplishment of this end? The very statement of the case shows its utter and intolerable absurdity. Following up the reasoning of the court in the

Gulf, C. & S. F. R. R. Co. *vs.* Ellis, if the law we have attacked and the rules of the University are justified by mere classification and by the fact that all similarly situated are treated alike, then a rule refusing admission to all members of a Masonic order or all members of the Methodist Church or all members of any organization would be justifiable. This again is a fair illustration of the *reductio ad absurdum*.

Counsel for defendants in error, realizing the trouble if the statute and orders of the Board of Trustees should be construed to have an extraterritorial effect, invokes the rule that if the subject-matter of the statute and resolutions will permit of a reasonable construction that would uphold the law by resolutions this construction must prevail; or, if one construction makes a law void and invalid and one makes it valid, the latter construction must control. Admitting that this is the rule, there is another rule well recognized and paramount to all others: that a statute or an order of the board which is in no way ambiguous is not open to construction, the meaning being manifest. Counsel will not contend that this court has the power to construe a statute so as to kill both the letter and spirit, as did the Board of Trustees in their resolution to construe the statute as not "to apply to students already entered and who conduct themselves as Southern gentlemen." Counsel says that it must be conceded that the object of the resolution of the board and of the pledge exacted of the applicant was to exercise control and management of the students while engaged in prosecuting their studies in the University, and that it was an unwarranted construction that any of these acts, resolutions or pledge were intended to control the students while not in the active prosecution of their studies at the University. Surely distinguished counsel forget that the pledge bound the applicant to regard his obligation as binding during vacation.

Again, even if the statute and resolutions of the board are capable of two constructions, was the applicant in this case

called upon as a lawyer or judicially to place the proper construction upon them? A strange dilemma to put applicant in! If he was at liberty to put one of two reasonable constructions upon the statute and upon the resolutions of the board, he was not responsible for putting his own construction upon them. But keep it in mind that, by the very language of the pledge, he was prohibited from putting even a remote construction upon this statute or these resolutions that would authorize a violation of the letter of either.

Concluding this brief, we submit that, however pernicious the influence of other Greek letter fraternities may be, it is admitted of record by the Governor and the defendant Board of Trustees of the University of Mississippi that the "Kappa Sigma fraternity has for its paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standing and good order and discipline in the student body of the different colleges with which it is connected," and that, therefore, it is a most important auxiliary to the authorities of the college in the accomplishment of their highest and best purposes; and however unfit and disreputable any other member of any Greek letter fraternity may be, it is admitted of record by the defendant Governor and Board of Trustees of the University that plaintiff in error "is not now and never has been in any way affiliated with nor paid dues to any chapter of any of the so-called Greek letter fraternities organized among the student body of said University or located at said University, and that although he is a member of the Kappa Sigma fraternity of Millsaps College, a Methodist college at Jackson, Mississippi, if admitted "as a student to the University of Mississippi, he has no intention or purpose of encouraging the organization, continuance, or maintenance of any Greek letter fraternity in said University or to affiliate with or pay dues to or in any way support or encourage any such organization in the University or be connected with any sort of activities or work

or meetings connected with said fraternity in said University."

This being true, is it possible that the court will not require defendants in error to answer these allegations of the bill? If these allegations are true, as the demurrer admits they are true, where is the reason, in order to maintain proper discipline in the University, for the exercise of any police power to keep out the plaintiff in error, and especially so when by the rule of the Board of Trustees above quoted "students already entered in the University are invited to remain although they may be members of fraternities at the University, the only requirement being the vague and indefinite one that they shall conduct themselves with that decorum always expected of a Southern gentleman."

Finally, we submit that the second section, in declaring mere membership with any chapter of a society, wheresoever situated, *per se* an offense punished by deprivation of all class honors and of degrees and diplomas, is unreasonable.

The diploma granted by the University to the graduate is a substantial right, and to arbitrarily deprive any one of that right simply because of a harmless connection with a society is a denial of the equal protection of the laws of the State of Mississippi.

To force one to give up his membership in a society which is in itself harmless, as a condition precedent to receiving and enjoying the honors of the University which he has worthily won, is a denial to that student of the pursuit of happiness, as sacred to him as life, liberty, and property, and just as much protected by the Fourteenth Amendment of the United States Constitution.

The second section of the act is unconstitutional because it clearly discriminates between the "Ins" and the "Outs" as shown in this brief.

Irrespective of the question of the constitutionality of the statute, the demurrer should have been overruled because the orders of the Board of Trustees and the pledge exacted of

plaintiff in error are clearly unauthorized, unnecessary, unreasonable, arbitrary, and deprive plaintiff in error of his constitutional rights.

Respectfully submitted,

A. F. FOX AND
HAMILTON DOUGLAS,
For Plaintiff in Error.

MAR 8 1915
JAMES D. MAHER
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 265.

J. P. WAUGH

vs.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI ET AL.

BRIEF FOR DEFENDANTS IN ERROR.

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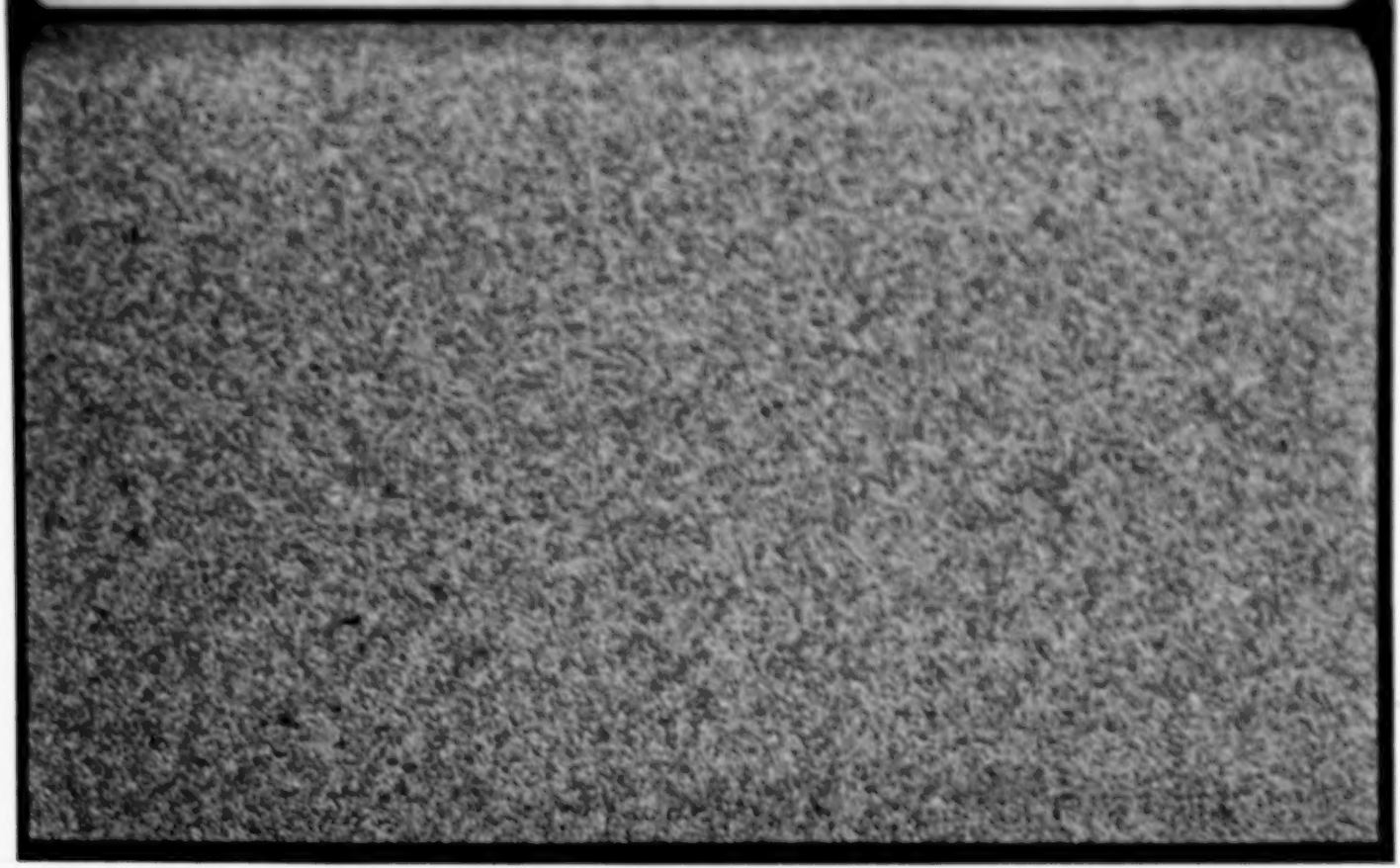

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1914.

No. 255.

A. P. WILSON

vs.

BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI ET AL.

BRIEF FOR DEFENDANTS IN ERROR.

ARGUMENT.

A brief statement of the facts appears necessary in order to clarify and limit the scope of the discussion.

The bill of complaint herein was brought for injunction against the Board of Trustees of the University of Mississippi and its Chancellor to restrain them from enforcing an order of the board of trustees, and enjoining them to refrain from requiring the complainant to sign a pledge incorporated in his application for admission as a student of the university. The further prayer was that the court should decree an act

of the legislature, approved February 27, 1912, to be in conflict with the Constitution of the United States and the Constitution of Mississippi, and that the rules and regulations adopted by the Board of Trustees in the order above referred to, and the pledge required of applicants for admission as students to the university were unreasonable and *ultra vires*.

It appears from this bill of complaint, which was demurred to, but finally sustained in the Supreme Court of Mississippi, that the legislature of Mississippi, on February 27, 1912, enacted a law abolishing and prohibiting the existence in the University of Mississippi and in all other educational institutions, supported in whole or in part by the State, of certain named Greek-letter societies and all other secret orders among students. The act further provided that no student in the university or in any such institution as indicated who was a member of any such order or society should be permitted to receive any class honors, etc., or compete for any prize or medal offer. It further provided that any student member of such secret society might, upon entrance to the schools, file with the chancellor, president or superintendent, as the case might be, an agreement in writing that he would not, during his attendance, affiliate with the same or attend their meetings, or contribute in any wise any dues or donations to them, and thereafter, so long as such agreement was complied with in good faith, he should not be subjected to the restrictions created by the act.

The trustees and faculties were directed to enforce the act by such rules and punishments as they might prescribe, and any member of the Board of Trustees, faculty or other officer connected with any such educational institution, who, knowingly, permitted any violation of the act and failed or refused to take proper steps to enforce it, was subject to removal.

It is set up that the complainant was and is a member of the Kappa Sigma fraternity, identified with its chapter at Millsaps College, and that this fraternity came within the

denunciation of the act referred to. That in November, 1912, he applied to the chancellor of the university for admission as a student in the law department, and was presented with an application in a form adopted pursuant to a resolution of the Board of Trustees, this being required as a prerequisite to his admission as such student, and he, refusing to sign, was refused admission as such student for that and no other reason. The pledge so asked of complainant read as follows:

> "I hereby state and affirm upon my honor that I am not now pledged to become a member of any Greek-letter fraternities, societies or sororities named in the Senate Bill 227 of the Laws of Mississippi, 1912, pages 192 and 193, chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within sixty days preceding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the university, and that I will not aid, abet or encourage the organization or perpetuation of any of said orders or societies so long as I am a student of the university.
>
> "I further pledge and promise that I will not apply for nor accept any scholarship or medal or in any way be beneficiary of any student's self-help fund, or accept any position in the university while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge.
>
> "I furthermore pledge and promise to regard this obligation as binding between the sessions of 1912-13 and 1913-14, and that it shall be my purpose and constant endeavor so to act that no word or deed of mine could be even remotely construed as being violative of the letter and the spirit of what is known as the Anti-fraternity Bill passed by the legislature of 1912 and approved by the Governor February 27, 1912."

The complainant avers that he has never been in any way affiliated with any Greek-letter society organized among the

student body of the university or located there, but admits that he is affiliated with and pays dues to the chapter of the Kappa Sigma fraternity at Millsaps College, although, if admitted to the University of Mississippi, he has no intention or purpose of encouraging the organization, countenance or maintenance of any Greek-letter fraternity in the university or to affiliate with or pay dues to or in any way support or encourage any such organizations *in said university* or to be connected with any sort of activity or work or meetings connected with any said fraternities *in said university.*

Careful consideration of the above shows, as we submit, a deliberate intention on the part of the complainant not to adhere to the intention of the act of the legislature. By section 2 of the act in question, the student who was a member of any secret order might sign an agreement upon entrance at the university that he would not affiliate with such orders or attend their meetings or contribute any dues or donations to them, and in such manner escape the restrictions created by the act, but the complainant clearly indicates that, being affiliated with, he intends to continue paying dues to the chapter of his fraternity, located at Millsaps College. By the terms of the act, therefore, he could not be permitted to receive any class honors, diplomas or distinctions, or to compete or contend for any prize or medal offered by his school or any association or individual. His action is not based upon any departure by the Board of Trustees from the exact terms of the act or any excess of authority, on their part based thereon, but because of absolute denial of the right of the legislature to restrict or control his will as to his relations with secret societies of a given nature.

The general tenor of the complainant's argument is:

First. That no restriction may be placed upon him as a citizen and taxpayer of the State of Mississippi interfering with his right to enter a public institution, at least no restriction based upon his connection with a secret society, and

Second. That being admitted as a student, any restriction upon his connection with secret societies can only be with relation to such societies as exist in the university itself, or, probably, operating upon the grounds of the university.

To the first proposition, which is in substance that whatever may be the control of the Board of Trustees over a student after he enters the university, it has no right to interfere with his entrance, basing such interference upon the grounds in question, it seems to us necessary to say but a word. If the Board of Trustees enjoyed the right and power to exclude from the university or from its honors any man who should, after admission, be guilty of a certain offense in their judgment obnoxious to good order, they certainly have the right in advance to refuse admission to any man who appears before them announcing clearly his intent after admission to do an act which has been declared to be prejudicial to good order. To use an extreme illustration, one's right to exclude from his premises a possible intruder who announces his intention of destroying the property thereon, is equally as great as the right of expulsion of an intruder who is engaged in such destruction, and in the present instance, as we have pointed out, the complaint itself clearly shows the intention of the complainant, if admitted, to continue his affiliation with a society which has come under the condemnation of the legislature.

We are, therefore, brought to the consideration of the second question, in substance, whether it is the reasonable and proper thing for the legislature or for the Board of Trustees to prohibit membership on the part of a student in a secret organization among students, whether there be a chapter of such organization in the university itself or somewhere else in the State.

We desire at this point to observe that no analogy exists for the purpose of this case between Masons, Odd Fellows, Red Men, and like organizations, on one hand, and organiza-

tions such as come under the condemnation of the law in this case. The organizations with which we are particularly concerned here are organizations exclusively of students having their location in colleges and universities or the towns where they are located, where the students may themselves meet. Even if there be no such organization in immediate association with the university, as in this case, it may nevertheless prove to be the fact that the student will be under the influence and control of the organizations, and that such influence and control, although exercised at a distance, will prove prejudicial.

The general effect of organizations such as we speak of may be so prejudicial to students *as students* in their relations with the faculty and with their fellow-students as to justify condemnation by the legislature or condemnation by the school authorities, a condemnation which would not be and ought not to be extended to the Masonic and like organizations. The fact that the legislature of Mississippi has condemned these organizations is, in the absence of controverting circumstances, evidence that objections exist, and this objection remains, notwithstanding the allegation on the part of the complainant that his particular fraternity "has for its paramount purpose the promotion and enforcement of good morals, the highest possible attainment and standing, and good order and discipline in the student body of the different colleges with which it is connected." All of this we may admit is the opinion of the plaintiff, which might be persuasive if the legislature, upon its own knowledge, had not found otherwise as to the particular subject. The proposition overlooks the fact that legal inhibitions rest with equal weight upon those of good life and good intentions and those of evil life and corrupt intentions.

As was sententiously said by the Supreme Court of the State of Mississippi in its opinion in this case:

> "Counsel for appellee stress the fact that the demurrer admits all the allegations of the bill, and call the

court's attention to the allegation wherein the high moral purposes of the order to which complainant belongs is set out, and argues that, whatever the general result may be, this case is bound to be affirmed, because with these admissions an institution cannot drive out of its halls, even before an act of the legislature, an order that is fruitful of so much good as is claimed for the order to which complainant belongs. But let it also be kept in mind that the court takes judicial knowledge of the law, and reads into every alleged complaint the law of the land, and where the thing complained of, and against which relief is sought, is a thing which the law prohibits complainant from doing, the court will not grant relief merely because complainant alleges that, if allowed to do the thing which the law says he must not, a great moral good will be accomplished. The allegation of fact amounts to nothing, when it merely shows that a complainant is seeking to disobey the law, no matter how strong the allegation that a great good will be accomplished if allowed to violate the law. We think this ends any discussion as to any admission of fact made by the demurrer."

Board of Trustees of University of Mississippi *vs.* Waugh, 62 So. Rep., 830.

It is to be presumed, and to be conclusively presumed, that when chapter 177 of the laws of 1912 was before the legislature for its consideration, adoption, or rejection, the question as to whether these Greek-letter fraternities were detrimental or not to the good order and good management of the State university was discussed "pro and con," and that evidence was introduced and considered by the legislature as to whether it was wise or unwise, reasonable or unreasonable, to allow a member of these societies to affiliate with or to become a member of the State university. To say that the courts have the right and the power to hear evidence as to whether the affiliation of a member of a Greek-letter fraternity with the university is or is not to the best interests of the university is to try over again the very identical ques-

tion which was submitted to, and which was passed upon by, the legislature; and this would be an usurpation upon the part of the courts of the legislative functions. The self-same arguments that are urged by the able counsel for the complainant in this case as to the wisdom or unwisdom of this act of the legislature, were doubtless the self-same arguments that were pressed and urged upon the legislature for the non-enacting of this statute. We urge and insist that this act of the legislature does not violate any constitutional right of the citizen, and consequently the act must stand unrestrained and unrestricted by any action upon the part of the courts. For reasons that were sufficient to the legislature these Greek-letter societies, by section 1 of the act, were absolutely prohibited and condemned—it was the judgment, the solemn, deliberate judgment of the legislative department of the Government that the existence of these Greek-letter societies in the various schools and colleges of the State, owned and controlled by the State, was detrimental to the best interests of these institutions, being a source of fomentation, disorder, and tending toward the disruption of good order and good management of the schools by the Board of Trustees. For the courts to now enter upon a trial of this question would be for the courts to try something which has already been tried and condemned by the legislature. This would be an usurpation by the courts of the legislative functions of government. It is a matter of common knowledge in this State that there has been for several years considerable friction between these societies and the Board of Trustees, and in order to effectually settle this matter, the legislature took the matter in hand and passed the act of 1912. By reference to the following authorities it will be seen that in other States and universities these societies are detrimental to the good management of the institutions; and to such an extent that the school boards have passed very stringent laws in reference thereto, and have excluded all members of these Greek-letter fraternities from

participating in class honors, etc. And in this connection we desire to impress upon the court the fact that the authority of simply the board of school directors (independently of and without authority from the legislature) has been upheld by the courts.

Wilson *vs.* Board of Education of Chicago, 233 Ill., 464; S. C., 15 L. R. A. (N. S.), 1136.

Wayland *vs.* Board of School Directors, etc. (Wash.), 86 Pac., 642; S. C., 7 L. R. A. (N. S.), 352.

Kinzer *vs.* Toms (Iowa), 105 N. W., 686; S. C., 3 L. R. A. (N. S.), 496, and notes thereto; see also State *ex rel.* Stallard *vs.* White, 82 Ind., 278, and especially the dissenting opinion of Woods, J.

The instant case is infinitely much stronger than the cases hereinbefore cited, for the manifest reason that in the cases above cited the resolutions which were considered and upheld by the courts were passed simply by the boards of education or the boards of directors, which exercise *purely delegated powers,* whereas in the case at bar the rule of law under consideration is an act of the legislature, in which dwells all legislative power; the legislature, being supreme within its sphere, the courts have no power at all to set at naught the legislative will unless violative of the constitution; in other words, the question as to whether these Greek-letter societies are inimical to the best interests and good management of the university has had its "day in court," and by the court (the legislature), which has full jurisdiction over the matter, the ban of condemnation has been placed upon these societies—they have been banished from the university, prohibited and abolished—and any person who is a member of, or who encourages, or affiliates with, these societies is prohibited from contesting for any class honors, etc.

Without reviewing the conclusions of the legislatures throughout the United States, we may content ourselves with some extracts from authorities produced by the plaintiff in

his brief. In the case of State *ex rel.* Stallard *vs.* White, 82 Ind., 278; 42 Am. Rep., 496, we have the following:

> "It is clearly within the power of the trustees, and of the faculty when acting presumably or otherwise, in their behalf, to absolutely prohibit any connection between the Greek fraternities and the university.
>
> "The trustees have also the undoubted authority to prohibit the attendance of students upon the meetings of such Greek fraternities, *or from having any other active connection with such organizations,* so long as such students remain under the control of the university, whenever such attendance upon the meetings of or other active connection with such fraternities tends in any material degree to interfere with the proper relations of students to the university.
>
> "As to the propriety of such and similar inhibitions and restrictions, the trustees, aided by the experience of the faculty, ought and are presumed to be the better judges, and as to all such matters, within reasonable limits, the power of the trustees is plenary and complete."

In the Stallard case, *supra,* the court undertook to draw a distinction between the right to expel for being a member of a fraternity and the right to deny admission. Strange to say, the court held that a pledge not to become a member of, or to affiliate with, the societies was unreasonable and, therefore, invalid, and yet admits the power to expel for being a member of or affiliating with the societies. The inexorable logic is that the power to punish necessarily carries with it the power to prohibit. It is absolutely absurd and ridiculous to say that one has the power to punish when he has not the power to prohibit; *the power to punish necessarily carries with it the power to prohibit.* If one cannot punish legitimately, he cannot prohibit; but if he can prohibit, he necessarily can punish. The fact is, punishment should never be imposed except when the act itself is prohibited. The unanswerable logic of Woods, J., in his dissenting opinion, is clear and manifest. He says:

"The proposition is put forward, seemingly as pivotal, that the admissions of students is one thing, and the government of them after admission is quite another thing, and on the strength of this it is said that the authorities in relation to the government and control of persons after they have been admitted have no direct application to the questions involved in the case.

"As applicable to the case in the record, the distinction seems to me to be unsubstantial and immaterial.

"If the moment a student has passed the portal of the institution he is bound to obey a prescribed rule of the college, he may, in all reason, be required, before he is permitted to enter, to promise obedience. The final remedy for disobedience is expulsion, and if there may be expulsion for disobeying, there may be exclusion for refusing to promise compliance with a proper regulation" (referring to authorities).

"It therefore must follow that if the legislature or the school authorities have the power to expel for being a member of these societies, they necessarily must have the power to enact, as a condition precedent to admission, the promise not to become a member of, nor to affiliate with, these societies, which have passed under the ban of the legislature."

The university is a public corporation, chartered under the laws of the State of Mississippi, and while a Board of Trustees was appointed for its government and management, it is manifest that thereby the legislature did not abrogate its authority, but continues to control and manage this institution and the student body. As is said by the Supreme Court of this State in deciding this case, 62 So. Rep., 830:

"The trustees are mere instruments to carry out the will of the legislature in regard to the educational institutions of the State. Both the institutions and the trustees are under the absolute control of the legislature. The legislature has the undoubted power to pass a law prohibiting Greek-letter fraternities from being organized or carried on at any educational institution in the State. The legislature has the right

> to say that any student desiring to enter any educational institution of the State shall renounce his allegiance to any Greek-letter fraternity *while he* is a student in any State institution. The law requires the trustees of the educational institutions of the State to see that this act is enforced, and in order to do this they have a right to exact of any student, who desires to enter, as a condition precedent to his entrance, that he will promise to obey the statute law of the State, and this is the law that the legislature has required. If complainant desires to enter the university, all that he has to do is to promise obedience to the laws of the State, and the doors of the university will be open to him."

This construction of this act of the legislature by the Supreme Court of the State is binding and conclusive upon all parties, and this court has not the power to review the construction placed by the court upon this act of the legislature except in so far as the act itself may conflict with the Federal Constitution.

The court, further proceeding, says:

> "The Fourteenth Amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wants to take advantage of the gratuitous advantages offered to youth to obtain an education, and yet refuse to obey and submit to the disciplinary regulations enacted by the legislature for the welfare of institutions of learning. The right to attend the educational institutions of the State is not a natural right, it is a gift of civilization, a benefaction of the law. If a person seeks to become a beneficiary of this gift, he must submit to such conditions as the law imposes as a condition precedent to this right."

We submit that the legislature being at liberty to establish and maintain the university, or not, as it may deem best, that it has the right not only to prescribe the qualifications for all persons who may apply for admission, but, in addition

thereto, has the undoubted right and power to prescribe the discipline and the management of its institutions. As is said by the Supreme Court of the State, the act of the legislature and the resolutions passed by the Board of Trustees *are mere matters of discipline.* It is to be presumed and conclusively presumed that the legislature of the State and the Board of Trustees are fully qualified to prescribe rules and regulations of discipline.

This court in Frisbie *vs.* United States, 157 U. S., 166, says:

> "Congress being at liberty to give or withhold a pension, may prescribe who shall receive it, and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension, and no man has a legal right to interfere in the matter of obtaining pensions for himself or others. The whole control of that matter is within the domain of congressional power. Having power to legislate on this whole matter, to prescribe the conditions under which parties may assist in procuring pensions, it has the equal power to enforce by penal provisions compliance with its requirements. There can be no reasonable question as to the constitutionality of this statute."

That great jurist, Mr. Justice Harlan, speaking for this entire court in Cumming *vs.* Board of Education, 175 U. S., 545, says:

> "We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of people in schools maintained by State taxation is a matter belonging to the respective States, and any interference on the part of the Federal authorities with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of the rights secured by the supreme law of the land."

II.

The only provision of the Federal Constitution which plaintiff in error says has been violated by this act of the legislature is the "equality clause" of the Fourteenth Amendment. It is perfectly manifest that no discrimination whatever is made by the act of the legislature, or the resolutions passed by the Board of Trustees in pursuance of the act against the plaintiff in error.

This question as to the "equal protection of the laws" has been threshed over so often by the courts that it is supposed by this time some certain, definite rule has been established, and an examination of the various cases upon this point leads us to a certain, definite statement. In all such questions, as has been recently said by the Supreme Court of the United States in Soliven, Bates & Co. vs. Walsh, 236 U. S., page 113: "The test of equal protection of law is whether all parties are treated alike in the same situation." There is nothing new or novel in this comprehensive statement of the law, but it is simply affirmative of all prior utterances of the Supreme Court of the United States upon this subject.

In Magoun vs. Illinois Trust & Savings Bank, 170 U. S., page 293, the court, in speaking of the "equality clause" of the Federal Constitution, says:

> "Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances—it does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and the liabilities imposed."

The complainant in the court below was not treated differently from any other citizen of the State in his situation; there was no discrimination against him whatever, and the very self-same, identical requirement that was exacted of him was exacted of all other persons who applied for admission to the university. This act of the legislature, like the dew from heaven, falls upon all alike. It is perfectly manifest that the legislature of the State, which is the creator of this institution, unrestrained and unrestricted by any fundamental law of the land, has the undoubted power to prescribe qualifications for those who may seek to enter this institution of learning. It would be perfectly competent for the legislature, without violating any constitutional provision, either State or Federal, to provide that no person of immoral character should enter the university, or to say that no person who is a member of any organization whose aim and object is the disruption of the State or Federal Government, or who is a member of any treasonable society, should be entitled to enter. This young man is entitled to the equal protection of the laws, but this equal protection of the laws has not been violated or abridged simply because all similarly situated are treated alike. Every person who is a member of *the societies, which have been tried and condemned by the State legislature*, is treated alike—no discrimination whatever is made; but even those who are members of those societies are entitled to admission, if they will not affiliate with those societies *while members of the university*. Wherein does the complainant's right differ from that of other persons? Wherein is he denied the equal protection of the laws? He is entitled to admission into the university upon the same terms and conditions as other persons; the same laws, rules, and regulations are applied to him that are applied to others. The State offers to him the advantages of the university upon the same conditions that are offered to other persons similarly situated. In German Alliance Ins. Co. v. Hale, 219 U. S. 308, the court says:

> "Statutes that apply equally to all of the same class, and under like conditions, cannot be held to deny the equal protection of the law; for, as this court has adjudged, 'the equal protection of the laws is a pledge of the protection of equal laws' to all under like circumstances" (referring to 118 U. S., 356; 113 U. S., 27; 113 U. S., 703).

To say that the State has not the power to prescribe qualifications to those who seek its bounty is to affirm the monstrous doctrine that the State cannot control its own institutions and is denied the privilege of legislating towards making more effective this instrumentality of the State, organized and instituted for the betterment of its children: that the State has no power to legislate for the good government of its own institution; that its management must be taken from that department of the State which has supervision over it, and placed in the power of the courts—a forum which has no power to dictate the policy of the State nor to prescribe qualifications for students—a doctrine so monstrous and revolutionary as to shake the very foundations of government. The legislature has as much right to say that a member of a Greek-letter fraternity may not be admitted as to say that an immoral person, or one afflicted with a loathsome disease, or one who refused to be vaccinated, or one who has not reached the age limit, shall not be admitted.

III.

There is nothing in the Federal Constitution which this act of the legislature violates, for the additional reason that this act is a police regulation reserved to the State, and the State undoubtedly has the right to govern its own public institutions, and the legislature of a State decides what laws are necessary within the police power, subject only to the condition that such exercise must not be arbitrary, and have some reasonable relation to a purpose which it was competent

for the Government to effect. In Barbier *vs.* Connolly, 113 U. S., 31, this court, speaking relative to the Fourteenth Amendment, says:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote * * * the education of the people," etc.

Indeed, the exercise of the functions of government is but the exercise of the police power, and this court in Mutual Loan Co. *vs.* Martell, 222 U. S., 233, says:

> "In a sense, the police power is but another name for the power of government, and a contention that a particular exercise of it offends the due process clause of the constitution is apt to be very intangible to a precise consideration and answer. Certain general principles, however, must be taken for granted. It is certainly the province of the State, by its legislature, to adopt such policy as to it seems best. There are constitutional limitations, of course, but these allow a very comprehensive range of judgment. Legislation cannot be judged by theoretical standards, it must be determined by the concrete conditions which induced it."

Indeed, plaintiff in error predicates his cause upon the theory that the act of the legislature comes under the head of the police power, and that such act is an arbitrary exercise of such power, and, consequently, in conflict with the Federal Constitution. We insist that the legislative act is in no sense an arbitrary exercise of power, but, upon the other hand, that this act has a reasonable relation to a purpose which it was competent for the Government to effect. The final analysis of all the cases upon this subject is this:

> "In determining whether or not a State has exceeded its police power, this court will never overthrow a statute of a State unless the action of the

legislature was arbitrary and had no reasonable relation to a purpose which it was competent for the Government to effect."

Otis *vs.* Parker, 187 U. S., 606.
Ah Sin *vs.* Wittman, 198 U. S., 509.
Lemieux *vs.* Young, 211 U. S., 429.
Kidd *et al. vs.* Musselman, 207 U. S., 461.
Boothe *vs.* Illinois, 184 U. S., 425.

Or, as was so succinctly stated by this court in Purity Extract Co. *vs.* Lynch, 226 U. S., 201-2:

> "It is also well established that when a State, exercising its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures, having reasonable relation to that end, as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered, is innocuous, it may not be included in a prohibition, the scope of which is regarded as essential to accomplish a purpose within the admitted powers of government."

After citing a number of authorities, the court proceeds:

> "With the wisdom of the exercise of that judgment the court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of the legislative power has been transcended. To hold otherwise would be to substitute judicial opinion of expediency for the will of the legislature—a notion foreign to our constitutional system."

In the language of this court in Purity Extract Co. *vs.* Lynch, *supra,* it may be admitted that being a member of a Greek-letter fraternity, when separately considered, may be innocuous, yet it does not, therefore, follow that being a member of a fraternity may not interfere with the wise management and good government of the university. The legislature so thought and decided. It is a matter of common knowledge that in order for a school or university to be effective, it is absolutely essential that discipline should be enforced, and that those in authority should exercise a rea-

sonable restraint upon the student body. By reference to the authorities hereinbefore cited, it will be seen that considerable friction has arisen between the faculties of various educational institutions and the student bodies, brought about by these Greek-letter fraternities. If the governing boards of educational institutions have not the power to exercise control over the student body, and such boards are not permitted to enforce rules of discipline, the effectiveness of the institutions will be greatly impaired and destroyed.

As was said by the court in People *ex rel.* Pratt *vs.* Wheaton College, 40 Ill., 186:

> "Among the rules they have deemed it expedient to adopt is one forbidding students to become members of secret societies. We perceive nothing unreasonable in the rule itself, since all persons familiar with college life know that the tendency of secret societies is to withdraw students from the control of the faculty and impair to some extent the discipline of the institution. Such may not always be their effect, but such is their general tendency. But, whether the rule be judicious or not, it violates neither good morals nor the law of the land, and is, therefore, clearly within the power of the college authorities to make and enforce. A discretionary power has been given them to regulate the discipline of their college in such manner as they deem proper; and, so long as their rules violate neither divine nor human law, we have no more authority to interfere than we have to control the domestic discipline of a father in his family. It is urged that the Good Templars are a society established for the promotion of temperance, and incorporated by the legislature, and that any citizen has a right to join it. We do not doubt the beneficent objects of the society, and we admit that any citizen has the right to join it if the society consents. But this right is not of so high and solemn a character that it cannot be surrendered, and the son of the relator did voluntarily surrender it when he became a student of Wheaton College, for he knew, or must be taken to have known, that by the rules of the institution which he was voluntarily entering he would be precluded from joining any secret society. When it is said that a person has legal right

> to do certain things, all that the phrase means is that the law does not forbid these things to be done. It does not mean that the law guarantees the right to do them at all possible times and under all possible circumstances. A person in his capacity as a citizen may have the right to do many things which a student of Wheaton College cannot do without incurring the penalty of college laws. A person as a citizen has a legal right to marry, or to walk the streets at midnight, or to board at a public hotel, and yet it would be absurd to say that a college cannot forbid its students to do any of these things. So a citizen, as such, can attend church on Sunday or not, as he may think proper, but it could hardly be contended that a college would not have the right to make attendance upon religious services a condition of remaining within its walls." Quoted with approval in Gott *vs.* Berea College, 156 Ky., 376; 51 L. R. A. (N. S.), 21.

It is true that Wheaton College was a private institution, and, therefore, had the right to prescribe the rules and regulations governing students, yet the reasoning of the court in this case is persuasive of the proposition that being a member of a secret society may interfere with the discipline of the university.

"Legislation cannot be judged by theoretical standards, but it must be determined by the concrete conditions which induced it." This court is not at all familiar with conditions that surround the University of Mississippi, but, upon the other hand, the legislature of the State, which has control of the university, is in direct touch with all the conditions that surround the university and the student body, and, being familiar with these conditions, deemed it advisable to enact the law under consideration.

Respectfully submitted,

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